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SUMMARY OF

COMMERCIAL LAW

BY

WILLIAM H. ANGER

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SUMMARY OF CANADIAN COMMERCIAL LAW

FOR USE OF

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AND

HANDBOOK FOR OFFICE MEN

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WILLIAM H. ANGER, B.A.

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TORONTO, CANADA

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PREFACE.

THE subject treated in this volume is one to which no class of readers in the Dominion of Canada can be indifferent. Every man should be acquainted with those laws with which he is immediately concerned. No man can properly discharge the duties he owes to the public, or to himself or to his family, without in some degree possessing a definite knowledge of the laws by which all are bound and the obligations resting upon each as an individual.

This SUMMARY OF CANADIAN COMMERCIAL LAW is the pith of many volumes covering the different branches of the laws, arranged to meet the needs particularly of the school-room and college and the busy man of affairs. Although everything not absolutely essential to the object for which this work is prepared has been rigidly excluded, still the chapters on Contract, Negotiable Paper, Indorsement, Statute of Limitations, Master and Servant, Chattel Mortgages, Mortgages, Personal and Real Property, Landlord and Tenant, Partnership, and Joint Stock Companies are minutely treated because they are of supreme importance, for they belong to every-day life as much as does the knowledge of the qualities and values of goods and commodities.

The short analysis at the head of each chapter may be found convenient for the use of the teacher in the class-room, and also for students in review work.

Technical and foreign terms have been almost entirely excluded from the body of the work; but the Glossary contains a list of the legal terms in common use, with their literal and technical meaning concisely given.

It has not been deemed advisable to burden the text by including those lengthy legal forms, as mortgages, deeds, leases, wills, etc., as printed blanks for them are everywhere kept in stock by stationers, and are usually purchased in that form by those who have occasion to use them. Books of forms for use of conveyancers and the profession are also plentiful.

But every man needs to be familiar with negotiable paper and other mercantile forms that are in daily and universal use in community, indeed should possess expert knowledge of such instruments; therefore much space and careful instructions have been given to those documents—numerous forms have been given, special features mentioned, various defects pointed out, and the laws governing them stated in detail.

In gathering and condensing the matter for this epitome of business laws from the various statutes and other voluminous works of law, the utmost care has been exercised to secure accuracy. Lawyers who are specialists in their several branches have assisted in looking over and correcting the text, and the hope is entertained that it will be found practical, useful and reliable.

W. H. A.

TORONTO. *July*, 1910.

SUMMARY OF COMMERCIAL LAW

CHAPTER I.

INTRODUCTORY.

Legislative Bodies—Great Britain; Canada; United States.
Two General Divisions of Law—Common; Statute.
Other Divisions—Civil; Criminal; Mercantile; Marine; Constitutional; International; Military; Canon or Ecclesiastical, etc.

1. In this volume constitutional and international law will not be dealt with, neither will municipal nor school laws be touched; but the single aim has been to present in condensed form a reliable digest of the general principles of the mercantile laws of Canada.

2. Legislative Bodies.—In Great Britain, the Imperial Parliament, including the House of Commons and the House of Lords. In Canada, the Dominion Parliament, including the House of Commons and Senate; and a Legislative Assembly for each of the Provinces. In the United States, Congress, including the House of Representatives and Senate, and the various State Legislatures.

But besides these great legislative bodies, in each country there are various other minor corporations possessing extensive legislative powers. Every city, town, county, township, and incorporated village has power conferred upon it by Parliament to pass by-laws which have the full force of statute law within their jurisdiction.

In Canada all authority is divided between the Dominion Parliament and the Legislative Assemblies of the different Provinces. The Legislative Assemblies have delegated to county, township, city, town and school corporations certain legislative powers for the purposes of local self-government.

Incorporated companies, lodges, and various associations working under Government charter, also have power to pass by-laws and adopt constitutions or measures that bind their members in all things pertaining to the association or company as firmly as they would be by the national laws.

Therefore, members of such associations must not forget that they are required in all matters pertaining to them to comply with their

regulations, and in case of any supposed wrong they must first exhaust the machinery which those regulations provide for the redress of grievances before taking the case to court for suit.

3. Divisions of Law.—The two great divisions of law are: (1) Common Law; (2) Statute Law.

Besides these two grand divisions of the law there are various other divisions used because of the different objects to which the law applies, as Civil, Criminal, Mercantile, Marine, Constitutional, International, Military, Canon or Ecclesiastical Law, etc.

4. The Common Law is what is called the unwritten law. It had its origin in the early days of Britain. The various races from which have sprung the British people, brought with them, when they invaded and settled in the country, their respective customs and rules of action, which, after the various Provinces became united under one government, caused considerable confusion for a time, until a general body of law was established for the whole kingdom, and thus called the *common law*. Owing to the fact that but few of the early inhabitants were able to read or write, the laws were for a long time simply preserved in memory, hence also called the *unwritten law*. The term *unwritten* does not now apply in the same sense that it did then, because every principle of the *common law* has long since found its way into print through the thousands of volumes of reports giving the rulings and decisions of the various courts, thus furnishing precedents for guidance in all future cases equal to any written law as to uniformity and definiteness. In every other State in Europe the Old Roman law predominates.

5. Statute Law is sometimes called the written law, in contra-distinction to the *unwritten* or common law. It is a law that has been formally written out and introduced into Parliament as a Bill, which being passed becomes a law of the land under the name of Statute Law.

Probably not one quarter of our commercial laws are found in the statutes; but they have grown up through long years of custom and usage, and from time to time receiving the sanction of the courts of justice, have become a well-defined body of laws as stated in Section 4—sometimes called the Law Merchant.

6. Uniformity of Laws.—The laws in Great Britain, Canada, the United States and Newfoundland are very similiar, owing to the fact that Newfoundland and all the States of the Union, except Louisiana, and all the Provinces in the Dominion, except Quebec, adopted the common law of England, thus making it the fundamental law of the English-speaking world; and it prevails in all cases where it has not been abrogated or modified by Statute Law.

Louisiana and Quebec adopted the old French law, which is an embodiment of the Roman law; therefore, people having dealings in Quebec must keep that fact in view. For instance, a promissory note outlaws in Quebec in five years from maturity or last payment, whereas in all the other Provinces it is six years.

CHAPTER II.

CONTRACTS.

Contract, Definition of.
Three Classes of Contracts—Simple; Under Seal; Of Record.
Kinds of Contracts—Oral; Written; Express; Implied; Executed; Executory; Illegal; Void; Voidable.
Contracts against Public Policy—In Restraint of Trade; In Restraint of Marriage; To Obstruct the Course of Justice.
Fraudulent Contracts—Fraud by Insolvents; Selling Property Obtained by Fraud; Statute of Frauds.
False Pretence; Theft and False Pretence; Embezzlement; Breach of Trust.
A Proposition—Time for Assent; Assent through Fraud; Assent through Force; Assent through Mutual Mistake; Proposition by Mail; Withdrawal of Proposition.
"Sufficient Consideration"—Good Consideration; Valuable Consideration; Mutual Promises; Conditional Promises; Gratuitous Promises; Consideration in Contracts under Seal; Consideration in Regard to Negotiable Paper; Insufficient Consideration; Illegal Consideration; Impossible Consideration; Failure of Consideration.
Minors and Contracts—Necessaries for Minors; Luxuries for Minors; Minor's Note; Minor as Agent; Minor Ratifying or Repudiating his Contracts; When Parents are Liable for Minor's Debts; When not.
Idiots; Lunatics; Drunken Persons; Indians; Alien Enemies.
Drawing of Contracts—Signature and Witness; Signature by Mark; By One Who Cannot Read; Erasures; Schedules; Seal; Seven Requisites to a Binding Contract; Interpretation of Contracts—Seven Rules; Element of Time in Contracts; Damages for Breach of Contract; Place of Suit.

7. Definition of Contract.—"A contract is an agreement between two or more persons upon *sufficient consideration* to do or not to do some particular thing." Contracts are the basis of all business transactions. A man buys a carriage—it is a contract; he hires a man, leases a farm, borrows money or signs a note—each one is a contract. A railroad or steamboat company agrees to carry 500 tons of coal from one point to another—it is a contract. So contracts include all business transactions, whether great or small. Agreement, bargain, contract—all virtually mean the same thing in every-day intercourse.

8. Three Classes of Contracts.—(1) Simple; (2) Under Seal; (3) Of Record.

1. Simple Contracts may be either written, as promissory notes, drafts, cheques, charter-party, way bill, etc., or verbal (parole), as buying and selling, hiring, and all the manifold transactions taking place each day in community, except those agreements under seal, as deeds, mortgages and bonds.

2. Contracts Under Seal (specialty contracts) must of necessity be in writing. They do not require a *consideration* to make them valid. The seal indicates greater deliberation and solemnity in executing such contracts, and a person is presumed to enter into them with a full knowledge of their contents, hence debarred from afterwards pleading "insufficient consideration."

3. Contracts of Record are the entries in the rolls of a court of record of its proceedings, as the High Court of Justice or County Court.

9. Oral Contracts are those made by spoken words (parole), and are usually called verbal. They are binding for the sale of personal property up to an amount fixed by statute in each of the Provinces, usually $40 in Canada (see Section 26), but are not binding for the sale of real estate, even though a payment of money accompanies the oral agreement. They are also good for a lease of property for three years and under, but in regard to other things they are limited in time to one year.

10. Written Contracts may be printed or written, or partly printed and partly written. They may be formal, using the legal phraseology containing the details of the whole contract, what was to be done, when, where and how to be done, and the consideration. Or they may be informal, merely contained in letters that have passed between the parties, or gathered from circumstances.

11. Written Contracts and Verbal Agreements.—As a usual thing a written agreement cannot be affected by a contemporaneous oral agreement. If the written instrument purports to embody the whole contract, the court would not be inclined to receive other evidence to show that the intention of the parties was different. But if the writing does not give evidence of containing the whole agreement, or shows evident omissions, then in that case evidence would be received to prove a contemporaneous verbal agreement. It would then be for the court or jury to say whether such other matters were a part of the agreement or not.

12. Express Contracts are those where the agreement is distinctly stated, and the things to be done or not to be done definitely declared. Example: (1) A farmer (2) purchases (3) a self-binder (4) from some person (5) for $130, (6) to be delivered on or before

the 5th day of June, (7) and to be paid for on the 5th day of October.

All the elements must be distinctly stated. It will be noticed there are seven elements in the preceding example.

13. Implied Contracts are those where the terms are not definitely stated, but are *presumed* to be understood. Example : A customer leaves his order with a grocer to have delivered at his residence five dozen eggs and $2 worth of sugar. Nothing is said about the price of eggs or the number of pounds of sugar sold for a dollar, or anything about payment ; but the parties themselves and the law *presumes* a tacit understanding as to the prices and the time of payment.

They are as binding as express contracts, but sometimes are difficult to prove or are misunderstood.

14. Executed Contracts are those in which the object of the contract is performed. Example : A person enters a carriage shop, buys a carriage and pays for it ; the contract is completed. A debt paid is a contract executed.

15. Executory Contracts are those which are not completed at the time the agreement is made. Example : A person leaves his order for a carriage at a certain cash price, to be completed in two months. The contract is not completed until the carriage is delivered and the purchase price paid. The larger part of contracts are of this class. As to the title and risk in the meantime, see Section 269.

16. Illegal Contracts are utterly void from the beginning and cannot be enforced. They have no legal effect except in so far as a party to them may incur a penalty. An illegal contract is where the thing to be performed, or not to be performed, is forbidden by law, as, for instance, smuggling goods into the country, or selling lottery tickets, or agreeing not to marry. In all such cases, if either party has performed his part of the contract he cannot compel the other to perform his, and if either party has paid money he cannot recover it back, as the contract is regarded as wholly vicious, and no court would attempt to enforce it. But if an innocent party has paid money it may be recovered back.

But illegality does not always appear " on the face " of a contract, and in such a case it must be established by *evidence.*

In a contract containing two or more promises that are entirely distinct, so that one could be performed without the others, and it turns out that one is illegal, the illegal part would fail, but the others may be enforced.

There are two general classes of illegal contracts : (1) Those against public policy—(*a*) In restraint of trade ; (*b*) In restraint of

marriage; (*c*) To obstruct the course of public justice; (*b*) Contracts with alien enemies in time of war. (2) Immoral—(*a*) To lead an immoral life; (*b*) Sabbath desecration; (*c*) Bets or wagers.

17. Void Contracts are those which from their beginning have no legal effect, except in so far as a party to them may incur a penalty. They do not bind either party. Those named in previous section under Illegal Contracts are examples.

18. Contracts Against Public Policy.—The policy of every community or state is to advance the public good, hence whatever contracts are opposed to the general good are said to injuriously affect public policy, and are, therefore, void. Among such the following three sections are included:

19. In Restraint of Trade as where a merchant sold his business and agreed not to engage in business again of any kind, it is void, because lawful trade is considered for the public good. He could, however, bind himself not to engage in business again in a particular locality, or in a certain line of business, as it would be only a partial restraint of trade, hence not within the meaning of the law.

All combines as among manufacturers, dealers, etc., to raise prices are illegal. Organized strikes by which the action of other workmen is to be coerced are also illegal.

20. In Restraint of Marriage.—Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The *condition* that he or she must not marry if attached to a bequest to any person (except a wife or husband) in a will is void. The person would take the property. A partial restraint of marriage where it is reasonable, may be valid, as where a bequest is left to a child on condition that marriage should not be effected until the age of twenty-one, or, say, twenty-five years. It would be valid, because it would merely fix a date when there would be less danger of contracting an ill-advised marriage. But if the time fixed should be, say, fifty years of age, it would be void, because that would be unreasonable.

A husband's bequest to his wife on condition that she does not marry again, though selfish, is legal, because she has once been married, hence it is not in restraint of marriage.

21. Contracts to Obstruct the Course of Justice are void. An agreement of a public official to do something contrary to his duty cannot be enforced; and money promised to him to use extra exertions in the discharge of his duty in a particular course cannot be recovered.

Contracts to lead an immoral life would also be void, and if money were paid it could not be recovered back.

22. Voidable Contracts are those which take their full and proper legal effect unless they are set aside by some one entitled to do so. They bind both parties until set aside. The party defrauded may void the contract if he chooses, or he may affirm it and compel the other party to perform it. (For example see following section.)

23. Fraudulent Contracts are voidable—not void. A definition cannot be given that would cover all the forms of fraud, but the following will make sufficiently clear what would constitute fraud: (1) A false statement as to the facts knowingly or recklessly made by a party; or (2) a concealment of facts that are known to one and not readily discernible by the other, and yet such as should be revealed. The misrepresentation must *actually deceive* in order to make a case of fraud. To sustain an action of deceit there must be proof of fraud—fraud that actually deceives—and nothing short of that will suffice.

The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it, two things are necessary: (1) He must not accept any benefit derived from it, or continue to act under it after he has discovered the fraud; (2) he must give prompt notice of the fraud after he has discovered it. The dishonest party cannot disaffirm the contract, but in all cases is bound to carry it out, if the other party demands it. If both parties practise fraud, neither one can enforce the contract against the other.

24. Selling Property obtained by Fraud.—In many cases a person obtaining goods or any kind of property through fraud, and transferring them to an innocent third party for value, gives a good title.

A promissory note obtained through fraud cannot be collected by the party who obtained it; but upon coming into hands of a third party before maturity for value, and who did not know of the fraud, would be valid and good against the maker. But a forged note cannot be collected; it is void from the beginning.

25. Fraud by Insolvent Persons.—An insolvent person representing himself as solvent in order to obtain goods on credit, is guilty of a fraudulent act. The seller, discovering it, may cancel the contract, or stop the goods if they have been shipped. An insolvent person need not disclose that fact to a creditor from whom he is purchasing goods unless he is questioned as to his financial standing. Penalty for false replies three years' imprisonment.

Goods purchased by an insolvent may be stopped while in transit, any time before they are actually delivered.

26. Statute of Frauds and Perjuries.—This famous Statute was passed in the 29th year of the reign of Charles II of England, 1678, and still exists there, in this country (except Quebec), in

Newfoundland, and in the United States (except Louisiana) with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others, and provided that certain contracts had to be in writing to be binding. The following are the requirements of the Statute which come within the scope of this work as they have been varied by our statutes :

1. That leases of land for more than three years must be in writing and under seal.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing.

3. Every agreement that by its terms is not to be performed within one year must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another must be in writing.

5. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry (engagement) must be in writing.

6. Contracts made for the sale of personal property of $40 and upwards must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid. In Quebec, British Columbia, Manitoba, Alberta, Saskatchewan, North-West Territories and Newfoundland the sum is $50, and in Prince Edward Island, $30.

Each of these divisions will be treated in appropriate chapters.

27. False Pretence is a representation either by words or otherwise (a shake or nod of the head) of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation ; hence there are four essentials to constitute *false pretence* :

1. There must be a false statement or act.

2. The offender must know at the time of making the statement that it is false.

3. The goods or money in question must be parted with in consequence of such false statement.

4. The false statement must be made with the intent to *defraud*.

The penalty for obtaining goods or money by false pretence is three years' imprisonment.

28. Theft or False Pretence.—In theft the owner of the property has no intention of parting with it to the person taking it ; but in the case of false pretence the owner of the goods does intend to part with them, but his consent to part with them is secured by the false representations made to him. In general it is not

stealing to take something growing out of the earth of less value than 25 cents.

29. Embezzlement is the taking of money that has not yet come into possession of the employer. For instance, a debtor pays him money for the employer and he keeps it himself; therefore, whenever money is received by the employee and is not accounted for, or its receipt denied, it is embezzlement. By the law of Canada this is now classed as theft.

30. Breach of Trust is a term used in connection with a person who is appointed a trustee of any property for the use and benefit of some other person, or a public or charitable purpose, and who fraudulently appropriates it to some other use. Persons guilty of this offence are liable to seven years' imprisonment.

31. Proposition and Its Acceptance.—A contract is composed of two elements—a proposition and an acceptance of the terms without any change or modification. A proposition is the beginning of every contract or agreement. One person makes an offer of some kind to another, and if the other person accept the offer in the same sense as made, then there is a contract. But if in accepting he makes any change in the terms, there is no contract. Example: One man offers to sell a horse to another for $100 cash. The other party says he will buy the horse but will only give $85. This is not assenting to the proposition, but is in effect a new proposition. Any other change in the terms would have the same effect, as for instance, the second party would say to the first that he would accept the offer but could not pay for three months. There is no assent here, no mutual agreement, hence no contract.

32. Time for Acceptance.—An oral proposition which does not include any provision as to time ceases when the parties separate. A written proposition with no time limit is good until accepted, if done within a reasonable time, or until withdrawn. If a time is fixed for acceptance, it must be given within that time. An acceptance may be given by an act as well as by words, as in case of all implied contracts. Example: The wife or children purchasing necessaries at a store, the assent of the father is *implied* and binds him, unless notice to the contrary has been given, and the goods supplied are according to his circumstances.

33. Assent Obtained through Fraud is not binding on the party who was defrauded. Such a contract may be rescinded by the innocent party, but he must do so immediately after he discovers the fraud. He must also refuse to exercise ownership over the subject-matter of the contract or accept any profits arising from it.

34. Assent Obtained through Force is not binding. If assent is obtained through threat of bodily harm, imprisonment, or any similar illegal pressure, it is void, because under *duress*. But a threat to dismiss from employment unless a certain proposition were agreed to by an employee would not be *duress*, and a contract signed under that kind of pressure or force would be legal.

35. Assent through a Mutual Mistake does not bind either party, because there was no actual assent given. Example: Counterfeit money innocently passed by one person to another in payment of a debt, and received as payment by the other party would be no payment, because of the mutual mistake. It would need to be returned promptly, however, after the discovery. There is but small latitude allowed in law for mistakes.

36. Proposition by Mail.—When a proposition is made by letter the contract is closed when the letter of acceptance is placed in the post-office. A proposition that does not prescribe any time for acceptance continues valid until revoked, or until a reasonable time has elapsed before acceptance. An acceptance given by telegraph closes the contract when the message is delivered to the company.

37. Withdrawal of Proposition.—A proposition may be withdrawn any time before the acceptance has been given. In case a proposition made by letter is to be withdrawn, the letter of withdrawal must be received by the other party before the letter of acceptance is placed in the post-office, otherwise it is too late. Withdrawal may be made by telegraph or by telephone, but the latter would be difficult to prove.

38. "Sufficient Consideration."—This law term refers to the *reason* or *inducement* upon which the parties to a contract give their assent and agree to be bound. In every binding contract there must of necessity be a *legal consideration*, and what the law denominates a "sufficient consideration." (Exceptions: Instruments under seal and negotiable paper, which see.) It need not be a monetary consideration, but may be something given, or done, or promised to be given or done by or for the person making the promise. For this *consideration* the person to whom the promise is given either gives something or does something, or promises to give or to do something in the future.

There are various kinds of *consideration*, and as this is one of the most important features of a contract, several will be here enumerated.

39. Good Consideration is one based upon natural love and affection that exists between near relatives. Example: A father may deed to his child a portion of his land, and it would be valid. He

could not recover it afterwards, even if he desired to do so. A *promise* to give a deed sometime in the future would not be binding.

40. Valuable Consideration may be either a benefit to the person making the promise or a loss to the person to whom the promise is made. It may be something of value given or promised to be given to the person making the promise, or an inconvenience to a person to whom the promise is made. Any of these would constitute a sufficient consideration. Examples : (1) A benefit to the promissor—A tailor promises to make a suit of clothes for a person for $20, or for one month's labor. (2) Inconvenience to the promisee—A person might lose a gold watch and tell another person he would give it to him if he could find it. The loss of time and inconvenience experienced in hunting for it would be sufficient consideration to make the promise binding. A promise to marry is valuable consideration.

41. Mutual Promises are a valid consideration if made at the same time. At a different hour, even on the same day, they would not be binding. Example : Smith promises to dig a well for Jones, and Jones promises to give Smith a certain carriage when the well is dug. One promise is a consideration for the other promise, and the contract is valid.

42. A Conditional Promise is a sufficient consideration for a direct promise, but the conditional promise is not binding unless the consideration is complied with. Example : A horse is purchased for $125 on the condition that he proves true in harness. Both parties are bound if the condition is met ; but if the condition fails, the purchaser is free to rescind the contract, that is, if the horse does not prove to be true in harness.

43. Gratuitous Promises, that is, promises without a consideration, are not binding, because there is no equivalent given. If there is no consideration there is no reason for the contract. (See Statute of Frauds, Section 26.)

44. Consideration as to Contracts Under Seal.—Contracts under seal are valid without a consideration. The placing of a seal on a contract makes it final. The seal itself is said to impute a consideration.

45. Consideration in Regard to Negotiable Paper is *presumed.* Promissory notes, acceptances and cheques in the hands of an innocent holder for value are valid even if they were issued without a consideration. With such paper consideration is presumed, and an innocent third party buying them before maturity may collect them. The party to whom they were given without value could not enforce payment ; neither could third parties if they purchased them

after maturity. Accommodation notes and acceptances are common examples of this kind.

46. Insufficient Consideration.—An agreement upon no consideration, or "insufficient consideration," cannot be legally enforced. Insufficient consideration, as a legal term, does not mean too little cash or value. A person making a contract is left to judge for himself whether he receives sufficient value or not. If a person sells a horse for $20 that is worth $50, or agrees to do a piece of work for $15 that is worth $45, he must stand by his bargain. The law will not interfere.

"Insufficient consideration" can only be used as a plea in cases where there is fraud—where the party has been deceived and the "insufficiency" is caused by the fraud, or in cases like the following; A farmer promises his hired men an addition to their wages in consideration of their making extra exertions to get in the mown hay before a threatening storm; or a vessel captain promises his sailors an addition to their fixed wages if they will make extraordinary efforts during a storm. In either case the *promise* is gratuitous and not enforceable, the employees being bound to so act in their respective services. A promise (unless in writing) to pay another's debt already incurred, in like manner is gratuitous, and cannot be enforced.

47. Illegal Consideration is where the act to be performed is forbidden by law, as smuggling goods into the country, selling a lottery ticket, publishing or selling immoral literature. In all such cases a party making the promise is not bound to keep it. (See Section 16.)

48. Impossible Consideration is an agreement to perform something which from its very nature is impossible. Example: A man might agree as the consideration of some contract to walk from Buffalo to Montreal in six hours, but he would not be held by law, as it would be impossible of fulfilment. A man might, however, agree to build a certain house in three days and be utterly unable to accomplish it; still he would be held for damages, because it would be possible to have men and material enough at hand to perform it.

49. Failure of Consideration voids the contract. Example: A person agrees to give $300 for a certain interest in a patent to manufacture gas, and afterwards the patent is found to be void. The contract cannot be enforced, and if a note were given it cannot be collected.

Partial failure of consideration does not void the contract, and the other party may obtain damages only for the part that failed.

50. Minors and Contracts.—Minors, called in the law books, Infants, are, in Canada, all persons, male or female, under twenty-one

years of age. In a few of the States of the United States females are of age at eighteen years, but not so in Canada. A wife under age may, however, bar her right to dower.

51. Minors may Contract for Necessaries.—Whatever things are necessary for him in his station and condition in life he may contract for, if he is not living with his parents or guardians, who are able and willing to support him. If he should not pay for such necessary articles, the dealer from whom he purchased them may sue and recover from him just the same as though he were of full age. In Ontario a minor fifteen years of age may also insure his life in favor of parents, brothers or sisters, and be held liable for premiums, if the Judge deem such insurance beneficial to the minor. It is likely the courts in all the provinces would treat life insurance in a similar manner.

Minors not at home and supporting themselves may sue and recover for wages earned by them. They are also liable for any damage done or wrong committed by them ; also for any criminal offence, Wages of minors may be garnisheed in payment for necessaries only.

52. Necessaries for Minors are usually reckoned board, clothing, education and medical attendance, according to their station in life. A suit of tweed clothing for a son of a mechanic, or any person in a similar station in life, would be regarded as a necessary, but a sealskin overcoat or a gold watch would not be. A fur coat or a gold watch would be held a necessary for a millionaire under age.

53. Luxuries for Minors would be anything beyond what the law classes as necessaries. For any such articles bought on credit the merchant cannot compel the minor to pay. If, however, the original goods are in his possession, the merchant has the power to replevy and take them back, but he cannot take them himself by force. The minor must either return the goods or pay for them.

54. A Minor's Note, given even for necessaries, cannot be collected. If a merchant should chance to take such a note for necessaries, he could not sue on the note, but he could hold the note until maturity and then sue on the open account, and present the note as evidence of the debt. He could not sue until the note matured, as that would be the date of payment. If there were an indorser or joint maker, he could, however, enforce payment against such party.

55. A Minor as Agent.—A minor may act as agent for another person in any capacity, and bind his principal in contracts made on his behalf. But a minor cannot appoint another person as agent to

represent him, because the other party could not bind the minor in a contract any more than the minor could bind himself.

56. A Minor may Ratify his Contract.—When a minor comes of age he may ratify his contract made before age, and thus make it valid and binding. The ratification must be in writing, or by unreasonable delay, to bind him.

57. Repudiating his Contract.—A minor having made a contract, not being for necessaries, which is yet to be executed, has a reasonable time after attaining his majority in which to declare it void. He may also rescind a contract that has been executed; but in such a case he must restore to the other party the *consideration*, if it be within his power to do so. Although a minor cannot bind himself in a contract, still he can hold the other party to his agreement. The same is true in regard to an idiot, an insane person, or an Indian.

58. Parents Liable for Minors.—While the minor is living at home and supported by his parents or guardians, they are liable for necessaries purchased by the minor, unless notice has been given to the contrary. They cannot be held liable for luxuries. They are also liable in case the minor is not living at home, but is supporting himself and collecting his own wages if they should pay part of his bills or accounts, they then render themselves liable for all of them. They may aid him if they wish by giving money direct to him, but must not pay any of the debts he contracts if they do not wish to become liable for all of them.

59. Idiots.—Persons having so little intellect as to be unable to perform the ordinary affairs of life cannot bind themselves in a contract. An idiot is a person who never had sufficient reason or intellect to understand the nature and effect of a contract.

60. Lunatics.—Such persons having lost their reason are manifestly incompetent to contract. But unless the insanity is of such a nature as to be patent to everybody, it must be established by legal proceedings to be relieved from a contract he may have entered into. To be adjudged insane it is necessary to be so adjudged by a Committee on Lunacy, or by a judge, or a court of competent jurisdiction. A person who makes a contract with a lunatic is bound by it as though he were dealing with a person competent to contract. No person but the lunatic or his legal representatives can void a contract that he has made. Contracts for necessaries for him the law holds binding.

In some cases of insanity, persons have intervals during which they are perfectly sane. These are called "lucid intervals," and contracts made during such periods are binding.

61. Drunken Persons.—A person merely strongly under the influence of liquor is not legally, though he may be mentally, incompetent to contract. To be relieved from liability on a contract he may have entered into, he must be wholly intoxicated so as to be unable to use his reason, unless the other party furnished liquor. Drunkenness will not relieve from criminal prosecution.

62. Indians.—Our Indians living on their reservations are wards of the Crown, and thus protected from fraud and deception by being placed in a similar position to minors, and rendered incapable of binding themselves in a contract. A person who makes a contract with them is bound, but the Indian is not bound, not even for necessaries.

63. Alien Enemies.—According to International Law, all commerce between nations at war is suppressed, and contracts entered into after the declaration of war are illegal and void, unless the Crown gives a special license. Contracts made before the war commenced are suspended during its continuance, but may be enforced after peace is declared.

Aliens in Canada in times of peace may own property and contract as freely as natural-born subjects or those who have taken the oath of allegiance, but they cannot vote at any municipal or parliamentary election.

64. Parts of a Formal Contract.—A formal contract will include :

1. Date.
2. Names of all parties in full.
3. Recitals or explanations, and reasons, if any.
4. The consideration.
5. The subject-matter.
6. All the several agreements between the parties.
7. Signatures of all parties, as they usually sign their names.
8. Seals, if any.
9. Signature of witness.

In drawing contracts be specific in naming all the terms and conditions of the agreement. State accurately the names in full, residence and occupations of the parties to the contract, and the different promises each one is to perform. If a person has several Christian names, include them all. A person who has no trade or profession is usually called a "gentleman." In giving the residence of the parties the smallest municipality must be mentioned first, as a township, or village, or town, or city, then the county, and lastly the Province.

The person agreeing to do work or to sell an article is usually called "the party of the first part," and the party paying the money "the party of the second part;" but there is really no difference which comes first.

65. Signing of Contracts.—The instrument should be signed in the presence of a disinterested witness. If the instrument has already been signed it will be sufficient for a person to *acknowledge* his signature in the presence of the witness. Some require to be under seal.

In all documents to be registered, as deeds, mortgages and bills of sale, it is necessary for the witness to verify his witnessing and signature by an affidavit which is written on or attached to the document.

66. Signature by Mark.—A person who cannot sign his own name must *request* some other party to do it for him. The following will illustrate the usual form:

Witness: J. C. SUMMERS. WILLIAM *his mark* × WINTERS.

A person signing his name this way may take hold of the pen while his name is being written, or he may not; he may make his own cross or he may not, just as he wishes. There must, however, be a witness to the signature.

67. Signature by One Who Cannot Read.—When a person who cannot read is executing an instrument, it is required that it be read over and explained to him in the presence of the witness so that he may fully understand what he is doing. The witness, in signing such an instrument, should mention the fact in some such words as the following:

Signed, sealed and delivered, after first having been read over and explained, in the presence of J. C. SUMMERS. } WILLIAM *his mark* × WINTERS.

Of course for a promissory note the word "sealed" should be omitted, as a seal would destroy the negotiability of the note.

68. Erasures and Corrections.—If any such should become necessary to make, it should be done before the document is executed. In making the corrections do not use a knife or rubber, but simply draw a line through the words with pen and ink so that the original words may be clearly seen. Then write the correct words between the lines, using a caret to show where they should be read in. The witness should put his initials on the margin opposite every such correction or interlineation as evidence that they were made before the execution of the document.

69. Various Sheets.—When a document is written on more than one sheet they should be fastened together and paged before being signed. Some who are extraordinarily formal will use a ribbon and put a seal over the tie of the ribbon. The witness sometimes places his initials on each sheet and mentions the number of sheets with his signature.

70. Various Documents.—When an agreement is composed of two or more separate documents they are usually marked with the letters of the alphabet, as A, B, C, etc., and referred to as "Schedule A," "Schedule B," etc. Example: Contracts for the erection of large structures are usually accompanied by plans and specifications marked A, B, etc., which are attached to and form part of the agreement.

71. A Seal should be placed on all important contracts.

Anything affixed after the name will answer for a seal as well as a regular seal bought for the purpose.

All corporate bodies and joint stock companies are required by law to have a corporate seal, which the officers must attach to or impress on all contracts which require a seal.

All instruments under seal are good for twenty years, except a mortgage on real estate. (See Section 248.)

72. Requisites of a Contract.—From what has been given, the requisites of a valid contract may be summed up as follows: (1) It must be possible. (2) It must be lawful. (3) It must be made by persons who are competent to contract. (4) It must be assented to by each and all the parties. (5) It requires a consideration, except for those under seal and for negotiable instruments. (6) It must be without fraud. (7) Some may be verbal, others must be in writing, and some under seal.

73. Interpretation of Contracts.—Although it is supposed that parties entering into a contract fully understand its terms and will use language in expressing them that will explicitly give their meaning, yet it often happens that such is not the case; hence certain rules have been adopted to interpret them when ambiguity occurs. The following are those of chief importance:

1. THE INTENTION of the parties at the time the contract was made is considered, rather than the literal meaning of the words.

2. CUSTOM AND USAGE of that particular business and place will be regarded when the wording of the contract is doubtful.

3. THE TECHNICAL WORDS AND PHRASES used will be given the meaning in which they are employed in that particular business.

4. Variations between writing and printing.—When one part of a contract is written and another printed, if they disagree the written portion will be accepted. The same is true with a note or cheque.

5. Liberal Construction.—Where the wording of a contract is ambiguous it is the rule of the courts to construe it liberally, so as to give effect to the common sense of the agreement, even sometimes rejecting objectionable clauses and supplying omissions. But where the Statutes fix a definite meaning to words, they will invariably be construed in that sense.

6. Construction as to time.—When no time is mentioned in the contract for its execution, the presumption is that it must be done at once, or in a reasonable time, and the courts will so construe it, according to the nature of the work to be done.

7. Construction as to place.—The law of the place where the contract is made governs its validity, and if it is to be performed there also, it will govern its interpretation. If it is to be performed in another Province or country, it must be in accordance with the laws of that Province or country, otherwise it is void.

74. Completion of Contracts.—The element of time is an important feature of all contracts. A contractor not completing his contract within the time specified is liable for whatever damages actually occur.

In cases where no time is fixed for the completion of a contract it must be performed within a "reasonable time," according to the circumstances, which, if not mutually agreed upon, would be for the court or judge to determine.

75. Cancelling Contracts.—In cases where a person has been induced through fraud, or falsehood, or misrepresentation of any kind, to enter into a contract to purchase land or any kind of personal property, he can repudiate the contract or bargain, and if he has paid money he can recover it. But he must act as soon as he discovers the fraud, and restore, or offer to restore the property in the same condition it was in when he received it. The fraud or misrepresentation must be of a material nature and actually deceive.

A purchaser who would rescind a contract must be in a position to restore the property. If he treats the property as his own (more than to care for it) after discovering the fraud, he cannot afterwards return it and recover his money. If a portion of the goods were used before the discovery of the fraud, it would be for the court to determine the value of the portion used. There is no chance for a person to rescind a contract merely because he changes his mind. (See Section 37 for withdrawal of a proposition.)

76. Breach of Contract is a failure to do what was required, or the doing of what was forbidden.

77. Damages for Breach of Contract or Wrongs.—The law provides two classes of remedies for the enforcement of the rights created by contract—civil and criminal. The criminal are for the punishment of crime, and in a general sense are dealt with by the Government; the civil belong to the individual and enable him to enforce his personal rights. His remedy is by suit for damages. There are different classes of damages: (1) Compensation for the actual loss sustained. (2) Nominal, where the failure to perform the contract is not regarded as intentional but merely through inability to do so. (3) Liquidated, where the amount is previously agreed upon in case damages should be awarded. (4) Speculative, where the profits that would have resulted from the performance of the contract are known, they may be recovered. (5) Exemplary, where for a malicious violation of a contract a sum in excess of the actual loss is awarded as a punishment.

78. Injunction and Mandamus.—Where a person is doing something he contracted not to do, or is infringing upon the rights of another, an order may be obtained from the court restraining him from further action until the case has been legally adjudged. This order is called an injunction and can be obtained from the judges of the higher courts.

The same judges may grant a Mandamus, ordering one to do his duty in a particular case. This is usually used against a public official.

79. Place of Suit.—In case of trial for breach of contract the place where the contract is made is where the suit will be tried. Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be. The place of contract in regard to real estate is where the real estate is situated. A note not made payable at any definite place would be sued where it was dated; but if payable at some other place, then that would be place of suit.

Goods ordered or sold from store or warehouse and taken by purchaser or shipped from there, would generally have that place for place of suit. But goods delivered by a traveller to the retail dealer, the place of suit would be there.

But Section 85 of the Division Courts Act of Ontario says: "The action may be entered and tried in the court nearest to the residence of the defendent, irrespective of the place where the cause of action arose," and the same permissive power is given the courts in all the Provinces.

CHAPTER III.

GUARDING AGAINST FRAUD.

Swindling Note; Note Preventing Fraud.

80. The itinerant swindler is always operating somewhere, in some line. Every class in the community have this enemy to watch against. The following suggestions may be of service:

1. Never give money or a note, except it be to a well-known firm, until the article purchased is in your possession and found to be according to agreement.

2. An article or a machine having been ordered, which, upon arrival at the freight or express office, is found to be not according to agreement, should not be received. Of course if the article is according to contract it must be received if delivered at the place and time agreed upon; but if not according to contract the article should be refused, and payment therefor cannot be enforced.

3. Always take a copy of every agreement that is made in writing, or any order given for machinery, goods, etc. The agent should sign the company's name, together with his own, to the copy you retain, which should always be marked "copy" by him. Never neglect to do this.

4. In dealing with an agent, or any other person, where a written contract, agreement or note is made, be assured of this, that nothing but the *written document* will be considered in court. No matter what else the other party promises in addition by word of mouth, or even in writing, if on a separate paper or not referred to specially in the written contract as a part of the agreement, it is utterly worthless where innocent third parties are interested.

81. Swindling Note.—The form of swindling note shown on the opposite page—which is made by merely cutting off the right hand end of what was supposed to be simply an agreement to sell six harrows, to be paid for after they were sold—is an old one. After the end is removed and the witness' name at the bottom is cut off, it is a regular promissory note, which could be sold to any person who knew nothing of the swindle, and by being thus transferred to an innocent holder for value it would be collected. The swindle does not always take this form, but sometimes the note would be in the middle of a sheet, and by cutting away the top, bottom and sides, a

regular form of note would be left. This illustration, however, is enough to put thoughtful persons on their guard against all similar forms of trickery.

It is seldom that such documents are necessary in legitimate business, and the attempt to use them should be received as a strong suspicion of fraud of some kind.

82. Note Preventing Fraud.—The form of note shown on the following page is the best protection that can be devised against the frauds and swindles that have caught even the shrewdest of men. In purchasing a machine or any line of goods from a strange firm without opportunity for a sufficient test, if a note is to be given, write out such a note as this on plain paper instead of using their blanks. This note is valid and can be collected as well as any other form, provided there is no fraud; but if there is fraud in connection with the transaction, it could not be collected. It is made non-negotiable, so that the payee cannot transfer it to an innocent holder for value to be collected It can be transferred by assignment; but in that case the purchaser does not get any better title to it than had the original holder, hence the maker is safe. The words "and not otherwise or elsewhere" are not essential, but (like the words "value received") it is better to use them, as they are evidence that

$175.00. BROCKVILLE, *September 28th*, 1910

Six months after date I promise to pay Jas. Brown, or bearer, when I sell six harrows, the sum of ONE HUNDRED AND SEVENTY-FIVE DOLLARS *when collected, to be payable at Toronto, with interest at eight per cent. per annum if not paid when due.*

Wm. J. Simmons

Agent for Jas. Brown.

Witness: J. J. Smith.

there was a decided intention that the note should not be transferred, and that it should not be payable at any other place than the one specified. This form of note may also be used in general

> $100.00 HAMILTON, *August 31st*, 1910.
>
> *Three Months after date I promise to pay to James Smith, only, One Hundred Dollars, at the Imperial Bank here, and not otherwise or elsewhere, for value received.*
>
> JOHN WINTERS.

business in transactions where there are conditions yet to be complied with on the part of the payee. (See Section 127 for regular form of a non-negotiable promissory note.)

CHAPTER IV.

GUARANTY AND SURETYSHIP.

Oral Promise that Binds; Promise that does not Bind; Letters of Recommendation; Guaranteeing a Debt; Guaranteeing Future Purchases; Creditor's Obligation to Guarantor; Discharge of Guarantor.

83. Guaranty or Suretyship is a promise of one person to another to answer for the debt, default or miscarriage of a third party. According to the Statute of Frauds and Perjuries (see Section 26) all such promises must be in writing in order to be binding. An oral guarantee is worthless in such cases.

The utmost care must be observed in regard to this feature of our laws. In many cases nothing but a simple recommendation is intended by the person making it, while a regular guarantee is understood by the other party. It all depends on the wording whether it is a promise to answer for the debt or default of another party, and thus necessary to be in writing, or whether it is an absolute promise of the guarantor to pay the debt himself, or to see it paid; in which case it might be binding without being in writing.

The following two forms of expression are very common in business, and will serve to illustrate the general distinction:

84. Oral Promise that Binds.—A person goes with his hired man to a store and says to the merchant, "Give this man goods (naming the amount), and I will see it paid," or, "I will be responsible." This is binding when given merely by word of mouth (if under $40 in Ontario), because it is not "answering for the debt of another," but is his own order and he virtually tells the merchant to charge the goods to him direct.

85. Promise that does not Bind.—Suppose he were to say to the merchant, "Give this man goods up to (naming the amount), and if he does not pay you by such a time (naming date), I will myself," or "send the bill to me." This would be worthless spoken by word of mouth, because it is "answering for the debt or default of another," and therefore utterly void unless put in writing. Even if there were witnesses it would still be void, according to that famous "Statute of Frauds and Perjuries," which has been good law for over 200 years (1678). It leaves the debt on the other party, the guarantor only agreeing to pay in case the debtor fails to do so. Every form of wording that may be used where this is the effect, is utterly worthless, unless put in writing.

86. Letters of Recommendation.—Great care should be taken in the wording of a letter of recommendation where financial obligations are to be created or business relations formed, if nothing but a simple recommendation is intended. All such phrases as "He is good for them," or naming a certain amount and saying, "He would be safe to that extent," etc., would constitute a guarantee. The liability may be evaded by modifying such expressions by, "I would regard him as safe" for such an amount, or "I think you would be entirely safe in giving him credit" for such an amount, or "I would trust him," or "I think you could trust him," or "He has always paid me," etc. With any such modifying phrase, much may be said to the credit of a worthy person without being held as a surety.

87. Guaranty of Debt already Incurred.—

In consideration of One Dollar, the receipt of which is hereby acknowledged, I guarantee that the debt of One Hundred and Twenty-five Dollars now owing to James Forsyth by Henry Johnston shall be paid at maturity.

London, Aug. 29th, 1911.

WILLIAM JENNINGS.

This guarantee might be addressed to James Forsyth merely in the form of a letter, and closed with "Yours respectfully," etc., and be just as binding. It is not legally necessary to express the nominal

consideration of $1.00, or any other consideration, but it is frequently done in a written guarantee.

88. Guaranteeing Future Purchases.—This is what would be called a "continuing guarantee":

BRANTFORD, July 30th, 1910.

In consideration of One Dollar, the receipt of which is hereby acknowledged, I hereby guarantee the payment of all goods purchased by John Dillon from Alfred Freeman during the remainder of the year 1910 total amount of said purchases not to exceed One Hundred and Fifty Dollars.

WALTER JONES.

89. Creditor's Obligations to Guarantor.—If the employee betrays his trust, or the debtor makes default in payment, the creditor must—

1. Give the guarantor notice of default within reasonable time after it is known.

2. Give the guarantor, as soon as he has made good the default, all his rights against the debtor, and if any property of the debtor, or other collateral security is in his hands, turn it over to the guarantor.

The guarantor, after making good the default, takes the place of the creditor, and may recover from the debtor not only the original debt, but also all expenses and costs incurred.

90. Discharge of Guarantor or Surety.—

1. By expiration of the time.

2. By notice to the creditor he may terminate the contract of guarantee. Of course this would not apply to a negotiable instrument not yet due, or to any contract, the time for which to be executed has not yet expired.

3. Any alteration of the agreement without his knowledge or consent will discharge the surety.

4. An extension of time given by the creditor to the debtor by valid agreement.

In order to be a discharge to the surety, the agreement with the debtor must be one that *binds* the creditor to an extension of time for payment, so that they are prevented from proceeding against the debtor themselves during that time, and which consequently prevents the surety from exercising his right of paying the creditors and suing the debtor upon the claim.

5. Fraud, either in respect to the contract itself, or some fraud or deception practised by the creditor himself, or by the debtor with the creditor's consent, by which the surety was induced to guarantee the debt, releases the surety from his obligation.

CHAPTER V.

PAYMENTS.

Payments—In Money; In Property; By Notes; By Counterfeit Money; By Forged Paper; Whom to Pay; Where to Pay; Payment Presumed; Application of Payment; Compromise; Composition Deed; Arbitration; Tender of Payment; Merging Securities; Legal Tender.

91. Payments.—Unless otherwise stated, every debt is payable in money. If in gold, it must be in gold; if at a certain place, it must be there; if to be sent by letter or by express, it must be that way. If the directions are complied with fully, even if the other party should fail to receive the money the debt is paid nevertheless. Of course, the party must be able to prove that he actually sent the money, and sent it according to agreement.

92. Payment in Property.—When the agreement is such, any debt or contract may be paid in goods, or other property, or in service. If such articles are not tendered at the time and place agreed upon, the debt becomes payable in money. Or if any property other than the kind agreed upon is tendered, it may be refused, and the debt collected in money. (See Section 139.)

93. Payment by Notes.—A promissory note or acceptance being merely a *promise* to pay, is not an absolute payment; and if it is not paid at maturity the debt stands the same as before. The case is different, however, if the note of a third party is given in payment for goods or on a debt. For instance, Jones gives Smith a note he held against Brown in payment for goods or on a debt. This note pays the debt. Of course, if Jones indorsed the note, so as to make himself liable when he transferred it, then Smith can proceed against him as surety on the note, but not for the original debt.

94. Counterfeit Money and Forged Paper.—Debts cannot be paid in counterfeit money, a forged note or cheque. The person receiving it must return it to the party who paid it to him within reasonable time. The debt still remains, and may be collected as though no such payment had been made.

95. To whom Payable.—Payments should always be made to the person mentioned in the contract, unless it be a negotiable instrument, then to the *holder* only. Never pay a note unless you get

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the note back or the party can prove its loss. If no other person is mentioned, then payment must be to the creditor himself, or his legal representative, such as an agent, executor, attorney, etc. Care must be exercised when making payment to his representative that said party is authorized to receive the money.

96. Place of Payment.—If a place of payment is stipulated it must be at that place. If no place is mentioned, then it is the debtor's duty to find the creditor or his residence or place of business, and pay it to him personally or to his legal representative or agent. (For negotiable paper, see Section 110.)

97. Presumption of Payment.—A note, acceptance, due bill, or receipt in the hands of a debtor is presumptive evidence that the debt has been paid, and will so hold unless there is positive evidence to the contrary. If there has been a great lapse of time without any demand being made, the presumption is that the debt has been paid, hence the Statute of Limitations (which see).

98. Application of Payment.—The person making the payment has the right to make the application. Where a debtor owes more than one debt to the same creditor, and they are all due, the debtor has the right to say on which debt the payment shall be applied. If the debtor does not say on which debt it should be placed, then the creditor may apply it as he may desire. When neither debtor nor creditor makes the application, but credit is merely given for the receipt of so much money, in case the business matters were settled in court, the court would apply the payment on the debt that is considered the most burdensome to the debtor. If the debts were a book account, an indorsed note, a chattel mortgage and a judgment, the court would apply it on the judgment. If the debt were a book account only, the court in applying the payment would begin with the items longest standing.

99. Compromise.—A disputed claim may be paid by any sum where there is an agreement to accept such sum in satisfaction for the claim. The agreement should be in writing, or have a witness. "Accord" and "satisfaction" are terms used in settlement of disputed claims by compromise.

100. Composition Deed.—In case of an insolvent person where the creditors accept a certain rate on the dollar and give him a discharge, the release is called a Composition Deed.

101. Arbitration and Award.—In case of any dispute, where parties agree to leave the settlement to arbitration, they are obliged

to accept the award as final, providing the arbitrators keep within the limits prescribed for them, in the Deed of Submission.

102. Legal Tender of Payment.—A legal tender is the attempted performance of a contract, whether it is to do something or to pay something. If payable in goods, then goods of that kind and quality must be offered at the exact place and time called for in the contract. If payment in money, it must be in the lawful money of the country, if that is demanded. A creditor cannot be forced to accept a cheque as payment. If payment is not accepted when a legal tender is made interest stops at that date, and no law costs or other expenses can thereafter be required of the person making the tender.

The refusal to accept part payment on a note or debt does not affect the debt in any way. The refusal to accept payment tendered in full does not cancel the debt, but is usually a bar to all interest and expense thereafter.

103. Merging Securities.—The higher security merges the lower. Where one person would be owing another on a book account or note, and then gives a mortgage for the same debt, the mortgage being under seal, is a higher security, and thus the book account or note is merged into the mortgage, hence would be no longer binding. If there were an indorser on the note he would be relieved. If it is desired that the mortgage should not merge the note, it must be stated in the mortgage that it is given as *collateral security*; then the note would still be binding, and the payment of either one discharges both.

If a note contains a statement on its face that it was given as collateral security it is not a promissory note, but merely a written promise, and is not negotiable, except by assignment.

Where collateral security is given with a note the right to such security goes with the note, and may still be held, even after the note may be outlawed.

104. Legal Tender Money.—In Canada, our Canadian copper coins are legal tender for the payment of a debt up to twenty-five cents; Canadian silver for $10; Dominion of Canada notes, British gold sovereigns, half-sovereigns, and any multiples of the sovereign (at $4.86 2-3 each), and United States eagles and half-eagles and any multiples of the eagle, for any amount.

CHAPTER VI.

NEGOTIABLE PAPER—PROMISSORY NOTES.

Negotiable Paper—Eight Instruments; Six Requisites of Negotiability.
Bearer or Order—Distinction between.
Promissory Notes—Definition; Negotiability Destroyed; Examples; Transfer by Assignment; Parties to a Note; Innocent Holder for Value; Place of Payment; Signatures; Value Received; Alterations; Defects that do not Invalidate; Days of Grace; Due Date, When; Accommodation Paper; Pay Holder Only; Cancelling Signature; Surety—Where to Sign—Note Obtained through Fraud; Forged Note; Individual Note; Joint and Several Note; Joint Note; Partnership Note; Lien Note; A Lost Note—How to Collect; Non-Negotiable Note; Patent Right Notes; Notes by Married Women; Note by One who Cannot Write; Interest after Maturity; Restricting Place of Payment; Collateral Note; Instalment Note; Chattel Note; Renewal Note; Legal Holidays; Interest.

105. Negotiable Paper includes those instruments in use in a community which pass freely from one person to another by simple delivery or by endorsement. Those which are transferable by simple delivery are written payable to a certain person, firm or corporation, or *bearer*; and those which are transferable by indorsement are written payable to a certain person, firm or corporation, or *order*, and require to have the payee's name written across the back to be transferred.

The instruments classed under Negotiable Paper are promissory notes, acceptances, cheques, and chartered bank notes, but besides these are also the following, which are negotiable by indorsement: Warehouse Receipts, Bills of Lading and Coupon Bonds.

106. Promissory Notes.—A promissory note is an *unconditional* written promise to pay a certain sum of *money* at a specified time or on the happenings of a certain event. Notice carefully the points in the definition given.

107. The Requisites of Negotiability for a note or bill—

1. Payable absolutely. There must be no *condition* expressed. If there be a condition expressed its character as a promissory note is destroyed and it becomes nothing but a written agreement, binding on both parties, but not negotiable, except by assignment. For instance to add "This note is held as collateral security" would destroy it as a negotiable instrument.

2. Definite promise to pay if a note, or a definite direction to pay if a bill.

3. It must be payable in *money* only. If it is made payable in anything except money its negotiability is destroyed and it is called a chattel note. (See Section 139.)

4. Certainty as to amount.

5. Certainty as to time. It must be made payable at some *specified time* or on the happening of a certain *event*. If made payable so many days or months after the death of a certain person it would be as valid as if made payable after *date*, as they are usually drawn, because it is an event certain to occur.

6. The paper must be *signed* and *delivered* in order to be valid. If stolen before delivery and sold, even an innocent purchaser for value could not collect it. It is like forged paper. If the maker attaches his seal it makes the document good for twenty years, but it is no longer a note.

108. Parties to a Note.—At the inception of a contract by promissory note the parties to the note are maker and payee. After its transfer other parties become interested, and the *holder* takes the place of the *payee*. If the original payee in transferring, indorses it in the usual way, he becomes surety for subsequent holders.

109. Innocent Holder for Value.—An "innocent holder for value" is the same as "a holder in due course," and means one who took a note or acceptance which was complete and regular on the face of it, under the following conditions:

1. That he became the holder of it before it was overdue, and that if it had been previously dishonoured he had no notice of such fact.

2. That he took it in good faith and for value, and that at that time he had no notice of any defect in the title of the person who negotiated it to him.

Any person thus becoming the holder of a note or acceptance for value on or before maturity, and who does not know of any fraud or illegality in connection with it, will collect it no matter how great the fraud by which it was obtained may have been, except in case of those marked "Given for patent right," or in case of forged paper. After a note has thus passed through the hands of an innocent holder for value, and been purged from its infirmity, it becomes immaterial whether any subsequent holder had notice or not of any prior defects or illegality. A person, however, becoming the holder of an *overdue* note or acceptance, or a non-negotiable note, taking it subject to all the equities and defects of title which affected it at its maturity, and henceforward no person who takes it acquires any better title than it had at that time. The payee is not a "holder in due course."

110. Place of Payment.—It is not necessary to the validity of a note to mention in it any place of payment; but it is desirable, for various reasons, that it should be done. The maker would then know where to find it at maturity.

If there is an indorser on the note, then it is better for the holder if it is made payable at a certain place, as he would have less difficulty in making the legal presentment required in order to hold the indorser. (See Section 170.)

If no place of payment is mentioned in the note it is payable where made and the holder is under no legal obligation to present it for payment at maturity; it is the maker's duty to find his note and pay it, and if he does not do so, the note may be sued the next day, or be allowed to run on and draw interest.

111. Signatures to Notes.—A person need not sign his own name to a note with his own hand, but it is sufficient if his signature is written thereon by some other person, by or under his authority. In case of a corporation it is sufficient if the corporate seal is attached to the instrument, but this is not likely to come into general practice on account of the ease by which forgery could take place. It is not necessary to attach the seal to a note or bill if the corporate name is used. (For a person who cannot write, see Section 131.)

A note or acceptance drawn or signed with lead pencil would be valid; so would an indorsement in pencil be binding; but no person of ordinary prudence would use a pencil, as it can be too easily erased and changes made.

112. Value Received.—These words are usually inserted in a promissory note, but they are not necessary to its validity. In regard to negotiable paper, value is *presumed*.

113. Alterations of Notes and Acceptances.—When any note or acceptance is *materially* altered without the consent of all the parties liable on it, the bill is void, except as against the person who made, or who assented to the alterations, and also against subsequent indorsers.

The alterations that are held to be material, and that destroy the bill, are: Alterations which change the sum payable, the time of payment, and the place of payment; also in case of a draft which has been accepted *generally*, the addition of a place of payment without the assent of the acceptor. In general, any interlineations made in a note or draft by the holder after it has been signed will relieve both the makers and indorsers.

114. Defects that do not Invalidate.—A bill is not invalid by reason that it is not dated, or that it is dated by mistake on Sunday; that it does not specify that value has been given, or name the place where it was drawn or where it is payable. It might be dated either forward or backward. If through oversight no date were placed on a note or draft, the holder would have the right to insert the proper date, according to the intention of the parties at the time the instrument was made.

115. Days of Grace.—In Canada (Newfoundland the same) three days of grace are allowed on all notes and acceptances, except those drawn payable *on demand*, which have no days of grace allowed, neither have cheques. Sight drafts in Newfoundland have no days of grace.

116. Maturity.—A note or acceptance is legally due on the third day of grace, and may be paid at any time during the business hours of that day. If payable at a bank, it must be paid during banking hours.

When the time is expressed in days, the actual number of days must be counted. In computing the time, the day upon which the note is dated is not included, but commences on the following day. If the time is expressed in months, it means calendar months and not merely thirty days. For instance, a note dated April 10th, at three months, falls due July 10th, and the three days of grace added makes July 13th as the legal date of maturity.

A note or acceptance falling due on Sunday, or any legal holiday, is payable on the following day, unless that again were a holiday, in which case it would be the first business day after that. In New York, notes and acceptances, except those payable on demand, falling due on Sunday or Saturday or other legal holiday, are payable on the next succeeding business day. Those payable on demand, maturing on Saturday, may be presented at 12 o'clock noon on Saturday if that entire day is not a holiday.

117. Accommodation Paper.—An accommodation note or acceptance is one where the person signing the note or accepting the draft does so without receiving any value therefor, but merely for the purpose of lending his name to some other person. The accommodation party is liable on the instrument to any holder for value, whether such holder, when he took the note or acceptance, knew such party to be an accommodation party or not.

118. Payment of Notes.—Payment of negotiable paper of any kind should never be made except to the actual holder of the paper who has it in his possession to deliver over, and who does deliver it over upon receipt of the payment. Serious losses are constantly occurring by a neglect of this plain business procedure. Payment even to the supposed holder who has not the note in his possession is not redeeming the note, but is simply placing that much money in his hands and trusting to his honor to apply it to the note. The note, however, may have been transferred and the true holder could collect it over again, or it may be in the bank and the party to whom payment was made may be on the eve of bankruptcy, hence the note would have to be paid over again. Paying money to an agent of a firm who has not the note to hand over, is simply trusting to the honesty of the agent. His receipt would be worthless as a set off if the agent kept the money and the firm sued on the note.

119. Cancelling Signature.—When a note is paid the name should never be torn off, as is usually done, but simply draw one or two lines through the signature of both maker and indorser, or better still have a stencil stamp and punch out the letters p-a-i-d, and file the note away as a voucher. There is the same necessity for preserving a redeemed note as there is for a receipt.

120. Surety is the person who agrees to pay in case the maker fails to do so. If he puts his name on the back of the note he is an indorser only, and the holder of the note must meet the requirements of the law in regard to presenting the note for payment (Section 170). But if he writes his name on the face, with that of the maker, he is not a surety only, but becomes one of the makers, and is, therefore, held for payment, whether the holder presents the note for payment or not.

121. Note Obtained through Fraud is voidable in the hands of the original holder, if the maker can prove the fact of fraud or misrepresentation, but if it has been transferred to another person before maturity, who gives full value for it and does not know of the fraud, then this third party will collect it. No difference what the fraud may have been or deception, or even if it had been stolen, this innocent holder for value has a good title and will collect it.

122. A Forged Note is void from the beginning, and cannot be collected under any circumstances.

123. Individual Note.—

\$40.00. NIAGARA FALLS, September 30th, 1910.

Sixty days after date I promise to pay to John Robinson or order, Forty Dollars, with interest at six per cent., for value received. W. L. MONTAGUE.

With the above form of note, which is not supposed to have any indorser on it, there are only two parties to the paper, the maker and the payee. There is no place of payment specified, which is a defect. At maturity, November 9th—12th, the holder, John Robinson, is not required to present the note for payment, but the maker is under obligation to hunt up his note and pay it. Mr. Robinson may have transferred it, and if the maker did not find it and redeem it on the 12th November, the then holder could any time after that date put in it suit. Its place of payment is Niagara Falls.

124. Joint and Several Note is one signed by two or more persons, who thus promise to pay either jointly, or individually, if necessary. There are several forms for the wording in general use, as: 'We. or either of us, promise to pay," or "We jointly and severally promise to pay," and signed by two or more persons, or

simply " I promise to pay," and let as many sign it as are interested, it being an " I promise " for each one. The latter form is preferable, because shorter.

In any one of these cases they are all jointly liable, and each one is individually liable as well, so that the holder of the note, in case he has to sue, may proceed against all of them at once, or against as many or against either one of them he thinks best.

Do not make a mistake as many do : the following is not a " joint note " but a " joint and several."

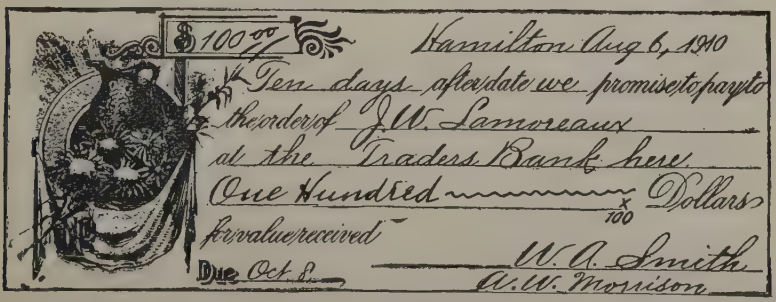
$100.00. NIAGARA FALLS, September 10th, 1910.

Three months after date we or either of us promise to pay J. D. Dickson, or order, One Hundred $\frac{xx}{100}$ *Dollars, at the Bank of Hamilton here, for value received.* JOHN WINTERS.
J. H. WHITE.

In the above joint and several note each one is liable for the whole amount, and if the holder found it necessary to sue in order to recover payment, he could sue both or either one, just as he thought best. If he sued one and collected the whole amount from him, then that one, if they were equally interested, could sue and collect half from the other, including half of the costs of the previous suit. But if the party who paid the note happened to be a mere security for the other, he would collect the whole amount from the other party. By placing ciphers in the cents place after the $100, in the upper left-hand corner, and the figures inserted between " hundred " and " dollars " it will be seen the makers made it impossible to add even a fractional part of a dollar by forgery.

Both the preceding notes are negotiable by indorsement only, as they are payable to *order* instead of *bearer*.

125. A Joint Note is written " we promise to pay," or " we jointly promise to pay," and signed by two or more persons, who are


$100 00/100
Hamilton Aug 6, 1910
Ten days after date we promise to pay to
the order of J.W. Lamoreaux
at the Traders Bank here
One Hundred 00/100 Dollars
for value received
Due Oct 8
W. A. Smith
A.W. Morrison

not *partners*. In the form shown on this page both parties are supposed to have received value and agree to pay it jointly. If it should

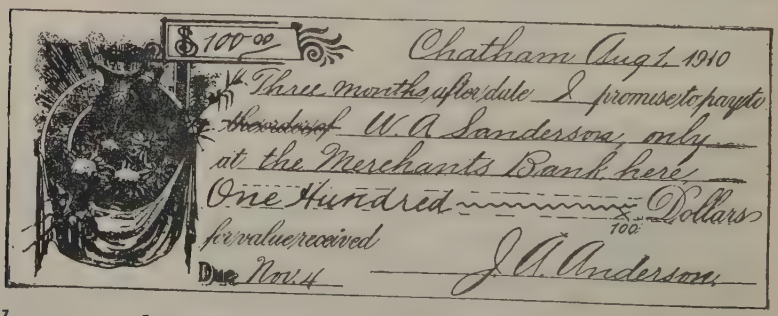
become necessary to sue in order to collect it, the parties must be sued jointly. If one of the parties left the country and his address could not be ascertained so as to serve him, he may be served *substitutionally* That is done by obtaining an order from the County Judge to serve another member of the family or otherwise as he may direct. Collection could then be made from the other party.

In the Province of Quebec, where the French law governs contracts, each maker of a joint note is liable for his proportional share only, which in the form shown here would be one-half. In the other Provinces there is some confusion on this point, but the courts are treating it as a joint and several note, and are holding each maker liable for the whole amount. (McLaren on Bills of Exchange, Section 100.) The Quebec law is the more reasonable.

If, however, one of these two parties, instead of having an equal interest in the *consideration* for which the note was given, had no interest at all, but merely signed the note as surety, and he should leave the country *before maturity*, or it was found that he was insolvent, so that nothing could be collected from him, in that case in all the Provinces the whole amount would be recoverable from the other party who received the value.

126. A Partnership Note is also usually written "*we*" promise to pay, but in that case it is not in fact a joint note, although it has that form, but is a joint and several note. Although three or four may sign, each member of the partnership is individually liable for payment of the whole note on account of the partnership laws.

127. Non-Negotiable Notes are those made payable to a certain person, firm or corporation, without using either of the words



bearer or *order*, and placing the word *only* after the name of the payee. This form of note, shown in full on this page, containing the word *only*, shows on its face that it was the intention of the parties to it that it should not be transferred, and it cannot be by mere delivery or indorsement, as in case of other notes.

Simply marking out the word *order* or *bearer* from the printed blanks is not sufficient to make the bill non-negotiable. Before 1890 such a note was absolutely non-negotiable, but not since that date. A bill or note now made payable to a particular person, but which does not contain additional words *prohibiting* transfer is still negotiable, notwithstanding the words *bearer* or *order* are omitted. It is regarded by the Statute as simply an omission, the same as forgetting to date the bill, which any holder could subsequently insert. Hence to make the bill non-negotiable it is absolutely necessary to put the word *only* after the name of the payee.

A non-negotiable note or bill may be transferred by assignment the same as a book account or due bill. The party who purchases such a note takes it subject to all the defects and equities that may burden it, and in no respect obtains any better title than the original owner possessed.

128. Patent Right Notes.—Any note or acceptance given for a patent right, or for any interest in a patent right, must have legibly written or printed across the face of it, before the instrument is issued, the words : " Given for a Patent Right." And without such words thereon, the instrument, or any renewal of it, is void, unless in the hands of an innocent holder for value.

Any person who intentionally transfers a note or acceptance which he knows is given for a patent right, or for an interest in a patent right, and is not thus marked, is liable to a fine not exceeding $200, or one year's imprisonment.

The purchaser of a patent right note or acceptance that is thus marked, receives no better title than the original owner possessed. Hence, if the instrument is affected with fraud or any illegality, the mere transference does not relieve it in the hands of an innocent holder for value.

129. Notes by Married Women.—In all of the Provinces married women may now control their own separate estate, and enter into contracts independently of their husbands ; hence in signing a note or other contract they should use their own Christian name, as " Sara A. Jones," instead of " Mrs. J. W. Jones."

$50.00. OSHAWA, September 3rd, 1910.

Thirty days after date I promise to pay Henry Alexander, or order, Fifty $\frac{xx}{100}$ *Dollars, at the Dominion Bank here, for value received.* SARA A. JONES.

But where a bill is payable to the order of a married woman, thus : " Mrs. J. W. Jones," the proper mode of indorsement is to indorse the bill as she is described, " Mrs. J. W. Jones," then add her own proper signature, " Sara A. Jones," under it. The same form of

signature would be used in accepting a draft (incorrectly) drawn on a married woman, as "Mrs. W. H. Stevens."

130. Date of Maturity Stated.—The following forn of note which names the date of payment, is frequently used, and is to be recommended ·

\$75.00. OWEN SOUND, July 10th, 1910.

On the tenth day of December, 1910, I promise to pay to J. H. Packham, or order, Seventy-five $\frac{xx}{100}$ *Dollars for va ue received.*

W. P. HENDERSHOT.

131. Note Signed by One Who Cannot Write.—

\$100.00. BELLEVILLE, August 4th, 1910.

Three months after date I promise to pay to the order of E. F. Milburn, at the Bank of Commerce here, One Hundred $\frac{xx}{100}$ *Dollars, with interest at six per cent. per annum for value received.*

Witness: C. J. SUMMERS WILLIAM $\overset{his}{\underset{mark}{\times}}$ WINTERS.

The party signing a note in this way may take hold of the pen while his name is being written, or he may not; he may make his own cross, or he may not, just as he wishes. There must, however, be a witness to the signature. The party assisting to make the note may sign as such witness if no other person would be convenient.

132. Lien Note.—A lien note is an ordinary promissory note with a clause added, which vents the *ownership* of the article sold from passing to the purchaser until the note has been paid in full.

\$100.00 ST. THOMAS, October 6th, 1910.

Three months after date I promise to pay Oliver Austin, or order, one Hundred $\frac{xx}{100}$ *Dollars, for value received.*

The right and title to the ~~possession~~ of the property in the Bell Organ, No. 4326, for which this note is given, to remain in the said Oliver Austin until this note or any renewal thereof is fully paid.

W. A. SANDERSON.

The form here shown is in general use, and convenient for the sale of a carriage, or horse, or household furniture, etc., in communities where the parties are known.

Such a note may be taken for an article being sold, but not for a debt that has already been contracted. The purchaser takes possession of the article, and has the full use of it, but he does not require

its *ownership* until the full amount of the note, or any renewal of it, is paid.

The Lien Clause must be worded with care. There are two essentials to be observed:

1. It must be merely the right and title to the *ownership* that is reserved in the vendor and not the right of *possession* of the article.

2. The goods must be sufficiently described to make identification certain.

Such a note properly worded is negotiable by indorsement, and is better than an ordinary note because it has this much additional security. If the vendor desires to do so, he may treat the note as any other without regard to this lien clause. If it has been transferred by assignment as well as by indorsement the holder may, if not paid at maturity, sue and collect from either the indorser or the maker without regard to the lien clause, and if he fails to collect the amount he may then resort to the lien clause, and take possession of the article.

But if the note is not paid at maturity, and the holder wishes to take possession of the article held by this lien, or to have the lien binding against subsequent purchasers and mortgagees, the requirements of the "Conditional Sales Act" must also be complied with. (See Section 283.)

A person who sells an article covered by a lien note or a chattel mortgage is guilty of a "wrongful conversion," and the person who purchases such article only acquires whatever title or equity such vendor has in it.

133. Assignment of Lien Note.—The following concise form for the assignment of a lien note is sufficient:

> For value received I hereby transfer the within note, and all my rights, title, and interest in the goods and chattels for which the said note was given, unto (name).
>
> (Date.) (Signature) ————

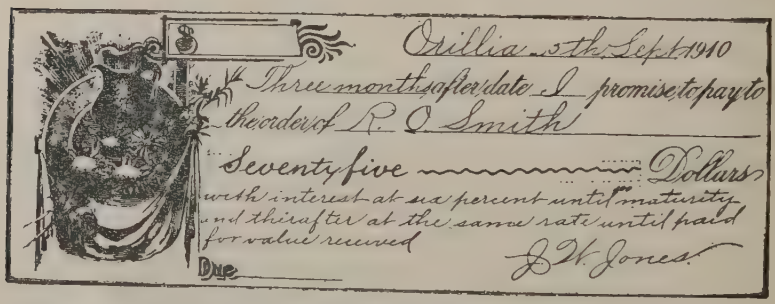
134. Lost Notes or Bills.—Where a note or acceptance has been lost the debt is not thereby cancelled. If it was lost before maturity the person who was the holder may apply to the maker or acceptor to give him another of the same tenor, giving him security to indemnify him against all persons in case the lost bill should be found again, and when due a copy may be protested.

If no tender of indemnity were offered before action would be taken to collect it, the plaintiff would very seldom be allowed his costs, and would probably be ordered to pay the costs of the defendant.

The lost instrument is usually advertised as a warning to the public not to purchase it, but such advertisement would not prevent an innocent holder for value from collecting it, that is, a person who purchased it without knowing of the loss or advertisement.

Any person finding such an instrument and attempting to conceal it, or negotiate it instead of trying to find the owner, is liable on a charge for larceny or theft.

135. Protecting Interest after Maturity.—The form shown


$
Orillia 5th Sept. 1910
Three months after date I promise to pay to
the order of R. O. Smith
Seventy five Dollars
with interest at six percent until maturity
and thereafter at the same rate until paid
for value received
J. W. Jones
Due

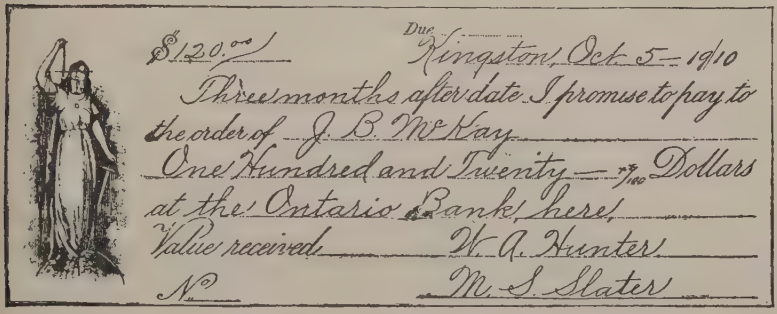
here retains the same rate of interest after maturity that it bears before. The legal rate of interest in Canada at present is five per cent., but any rate can be collected that a person legally agrees to pay. A note drawn for a higher rate than five per cent., if not paid at maturity will then drop to five, and if drawing less than five it will rise to five unless it expressly stipulates the contrary, in either case.

The usual way in which this is attempted to be done, by writing immediately after the rate of interest the words " until paid," is not sufficient. The courts rule that that simply means at maturity, for that is the time when the instrument is supposed to be paid.

To make the rate in the note binding after maturity, words like the following must be used, " with interest at (the rate desired) until maturity, and thereafter at the same rate until paid."

136. Restricting Place of Payment.—The form on opposite page is a joint and several note restricting the place of payment, so that if it is not presented at the place stipulated on the date of maturity, no cost or expense will be incurred until after it has been presented. The makers contract to pay this note on January 8th, 1910, at the Ontario Bank. The holder is supposed to have the note at the bank at maturity, but if there is no indorser on it he wishes to hold, he need not, however, do so. The omission to present the paper for payment at the bank on the date of maturity does not discharge

the makers, but if any suit were instituted thereon before its presentment, no costs would be added, *provided* the makers tendered the money at the bank at maturity.


$120.00
Due
Kingston, Oct 5 1910
Three months after date I promise to pay to
the order of J. B. McKay
One Hundred and Twenty 00/100 Dollars
at the Ontario Bank, here
Value received W. A. Hunter
No M. S. Slater

If the note were payable at any other place, a tender of the money at such place would also be a bar to any subsequent costs, and probably to interest after maturity.

The Statute says that in such cases the question of costs and subsequent interest is left to the discretion of the court, but no judge, except under peculiar circumstances, would allow costs in a case of that nature, and very few would allow interest after maturity.

137. Collateral Note.—It often occurs that a person wishes to borrow money on his own note where security would be necessary, and yet may not wish to give an indorser, but he has shares in some stock company or bank, or has a mortgage which he could place with the creditor as collateral and thus secure him. In such case the following note would be in order:

$200.00. DUNNVILLE, May 10th, 1910.

Three months after date, for value received, I promise to pay Wm. Braund, or order, at the Bank of Commerce here, Two Hundred Dollars, with interest at six per cent.

Having deposited with the said Wm. Braund six shares in the Ontario Navigation Co., Limited, which I authorize him upon the non-performance of this promise at maturity to sell either at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply the proceeds, or as much as may be necessary to the payment of this note and all necessary expenses and charges, holding myself responsible for any deficiency.

A. J. PALMER.

N.B.—A life insurance policy could not be used as above unless the *beneficiaries* signed the note and the assignment was recorded on the company's books, nor shares in a ship without complying with the law.

In all cases where collateral security is given with a note the right to such security goes with the note and may still be held even after the note might be outlawed.

An article, say, a gold watch, left in this way as collateral security would not be "pawned," and the lender of the money would not be liable to fine for practising pawnbroking without a license. The transaction is legitimate and legal.

138. Instalment Note.—It does not affect the negotiability of a note to make it payable in instalments, but it cannot be sued until the last instalment is due, whether the preceding instalments be paid or not. This may be guarded against by adding a clause like the following: "In the event of default in making any of the above payments at the time mentioned, the whole amount of this note shall become due and payable forthwith."

The following instalment note will illustrate the form:

$60.00. HUMBERSTONE, July 1st, 1910.

On the first day of each month hereafter for four months consecutively I promise to pay to Messrs. Augustine & Kilmer the sum of Fifteen Dollars, the whole amounting to Sixty Dollars, the first of such payments to be made on the first day of August next.

In event of default in making any of the above payments at the time mentioned, the whole amount of this note shall thereupon become due and payable forthwith.

JAMES HARDY.

139. Chattel Notes are payable in merchandise of some kind instead of money. They are, therefore, not negotiable, even if the words *bearer* or *order* should be inserted, but they may be transferred by assignment the same as a due bill, a lien note or book account. Following is a form:

BRANTFORD, July 29th, 1910.

Five months after date I promise to pay James Smith, at his store, One Hundred Barrels of good Baldwin Apples at market prices.

J. W. WINTERS.

The price per barrel might be named, as at $1.50 per barrel.

If the party giving such a note does not tender the articles at the time and place mentioned in the note, the holder may sue; and if payment in the chattel is not made, the amount becomes payable in money; but a demand for their delivery at a certain date must be made before entering action. If the articles are cumbersome and he *offers* to deliver them, it will be sufficient. If the payee refuses to receive them the debt is discharged by the tender of the articles, according to the directions in the note, but the *property* in the articles tendered passes to the payee. If the debtor should be compelled to take the goods home again, he becomes the bailee for the payee, and must give them ordinary care, but at the risk and expense of the payee. If at any time afterwards the creditor requests their delivery, they must be delivered up if the expenses that may have been incurred, as cartage, storage, insurance, etc., are paid.

140. Legal Holidays.—The following are legal holidays for all the Provinces: Sundays; New Year's Day; Good Friday; Easter Monday; Christmas Day; Victoria Day, May 24th; Dominion Day; H. M. Birthday; Thanksgiving Day—any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday or a general feast or thanksgiving; Labor Day; Civic Holidays, appointed by proclamation of the chief magistrates of towns and cities. When New Year's, Christmas, King's Birthday, Victoria Day or Dominion Day falls upon Sunday, then the day following is a public holiday.

Newfoundland observes the same days except Labor Day, Dominion Day and Easter Monday.

Alberta, Saskatchewan, Yukon and the Territories also have the above days with Ash Wednesday and Arbor Day added.

And in the Province of Quebec all the said days (except Arbor Day), and the following additional days: The Epiphany; Ash Wednesday; the Ascension; All Saints' Day; Conception Day.

Promissory notes falling due upon Sunday or a holiday will legally mature on the day next following which is not a holiday.

The time limit also of any contract expiring or falling upon a holiday, the time so limited shall extend to, and such thing may be done on, the day next following which is not a holiday.

Civic Holidays being merely local are not bank or general holidays, hence negotiable paper and all outside contracts must be attended to.

Persons engaged under a contract of service, and apprentices, cannot be compelled to work on any legal holiday, except under special agreement.

Employees working by the week, month, or year, unless otherwise specially agreed to, are entitled to their wages for the holidays.

141. Interest.—The legal rate of interest in Canada is now five per cent., as fixed by Chapter 29 of 1900, Dominion Parliament. Any rate, however, can be collected that a person legally agrees to pay, but where the rate is not stated it will only be five per cent. A note drawn where nothing is said about interest will not draw interest until maturity; but if not paid at maturity it will then commence to draw five per cent. A note drawing a higher rate than five per cent., if not paid at maturity will drop to five, and a note drawing a lower rate than five, if not paid at maturity will rise to five per cent.

If the rate is over or under five per cent., and it is desired that it should remain at that rate after maturity also, a clause must be added like the following: "With interest at (the rate desired) until maturity, and thereafter at the same rate until paid," or "both before and after maturity."

Respecting interest for a shorter period than one year, Section 4 provides: "Except as to mortgages on real estate, whenever any interest is by the terms of any contract, whether under seal or not, made payable at a rate per day, week, month or for any period less than a year, no interest exceeding the rate of five per cent. per annum shall be recoverable unless the contract contains an express statement of the yearly rate of interest to which such other rate is equivalent."

Compound interest cannot be collected unless it is agreed in the contract to be paid.

Book Accounts differ from Notes. A book account overdue will not draw interest unless the merchant has it printed on his invoices and bills he gives with the goods that interest will be charged after a certain date. Then it can only be five per cent. unless the debtor consents to pay more. Simply having eight or ten per cent., as the case might be, printed on the invoices does not make the charge binding, and the debtor may refuse to pay anything over five.

Judgments also draw five per cent. interest. Chartered banks are allowed seven per cent., but there is no penalty if they charge more; they cannot, however, collect more than seven by suit.

The Money-lenders Act of 1906 applies to all persons in Canada (except registered pawnbrokers) who advertise themselves as money-lenders. On loans of under $500, they are prohibited from receiving over 12 per cent. per annum under a penalty of imprisonment not exceeding one year, or a fine not exceeding $1,000.

It does not apply to small loans where the whole interest charged does not exceed 50 cents.

In Newfoundland the legal rate is still six per cent.

CHAPTER VII.

ACCEPTANCES.

Drafts—Definition; Two Classes; Set of Exchange; Bank Draft; Parties to a Draft.
Negotiation of Bills—Before Maturity; After Maturity.
Acceptance of Drafts—How.
Forms of Acceptance—General; Qualified; Conditional; Partial; Changing Time.
Kinds of Drafts—Sight; Time after Date; Time after Sight; Demand.
Collection of Notes and Acceptances.

142. Acceptance is the name given to a draft after it has been accepted. A draft is an unconditional written order from one person, called the *drawer*, to another called the *drawee*, to pay a certain specified sum of money, at a specified time, to a third party, called the *payee*. Drafts are also called Bills of Exchange. Bills of Exchange are divided into two classes, viz., Inland and Foreign.

Those payable in the same country in which they are drawn are called Inland, and those payable in another country are Foreign.

The Inland or Domestic have three days' grace allowed on all except those on demand.

If a draft is payable in anything but money, or if it orders something to be done in addition to the payment of money, it is not a bill. But to name a particular account to be debited with the amount, or to include a statement of what gives rise to the bill, would not be *conditional*, hence would not affect the bill.

143. Set of Exchange.—In the days of sailing vessels, delays and losses were frequent in ocean mails, hence the foreign Bills of Exchange were usually sent in sets of three, called a "set of exchange," and each sent by a different route, or on a different day, so as to guard against delays or accident, one of the three being almost certain to reach its destination. But the great ocean liners now are as reliable as the mail train, therefore it is no longer necessary to procure more than one Bill of a set of exchange.

144. Bank Draft is a draft of one bank on another, payable on demand. The cost to the remitter is usually one-quarter of one per cent. more than the face, but it is cashed at par by the bank on which it is drawn. It is a safe medium for the transmission of money to

others, or in carrying sums of money when made payable to your own order. When drawn on a foreign country they are called Foreign Bills of Exchange.

145. Parties to a Draft.—There are three parties to a draft—drawer, drawee and payee. The drawer is the one who makes or draws the draft and who is thus paying his creditor by the draft drawn on his debtor. His name always stands in the lower right-hand corner.

The drawee is the one on whom the draft is drawn, that is, the one who has to pay it. He thus pays his debt to the drawer, and his name is always written in the lower left-hand corner.

The payee is the one in whose favor the draft is drawn—the one who is to receive the money. The payee is the same, in both notes and drafts, and in each case his name is placed in the body of the instrument (centre).

A note or draft may be made payable to one, or to two, or to more persons jointly, or to the holder of an office.

146. Negotiation of Bills.—In transferring notes or acceptances before maturity, if they are made payable to a certain person or *order*, the payee must write his name across the back, that is, *indorse* them. After that first indorsement by the payee, they may pass freely from one person to another without further indorsement.

If they are made payable to a certain person or *bearer*, then they are transferred simply by delivery or handing them over to the purchaser. It is far better to use *order* instead of *bearer*, because in that case a note lost or stolen before it had been transferred would not be indorsed, consequently could not be disposed of.

The transferring of negotiable paper before maturity to an "innocent holder for value" (see Section 109) gives a good title. By indorsing the paper before transference, of course, renders the indorser liable for payment in case the maker of a note or acceptor of a draft fails to pay. Liability may be evaded by indorsing "without recourse" (see Section 164) if the purchaser will permit of such indorsement.

The transferring of negotiable paper after maturity or a non-negotiable note before maturity does not give the purchaser any better title than the original holder possessed. (See Section 109.)

147. Acceptance of Drafts.—A draft is not binding until it has been accepted, any more than an ordinary order on a merchant would be binding on him before he has accepted it. In accepting a draft the mere signature of the drawee is sufficient without the usual words being added. A draft is usually accepted by writing across the face of it, pretty well towards the upper end, which is the

left-hand side, the word " Accepted," giving the date, where payable, and then signing the name immediately under, as :

" Accepted August 28th, 1910,
" Payable at Imperial Bank, here,
D. A. McLaren."

(See Section 155 for Model.)

Drafts drawn payable " at sight," or a certain time " after sight," or a " demand " draft that is not paid when presented, should have the *date* of " acceptance " given, but a draft drawn payable a certain time after " date " need not have the date of acceptance given ; but even with these it is as well to give the date of acceptance too. Where a draft is accepted it is said to be " honored," and where acceptance is refused it is said to be " dishonored."

When a draft is presented for acceptance the drawee may demand two days for acceptance, and in such case it cannot be protested until after that time. But if the time is not named it may be protested the day it is first presented. The exact wording of the Act is : " The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter."

Newfoundland follows the English Statute, which says the draft must be accepted " within the customary time " or the holder must treat it as dishonored.

148. General Acceptance is the name used when a draft is accepted in the ordinary way, as illustrated in the previous section.

149. Qualified Acceptance is when the acceptance in express terms varies the effect of the draft from what it was originally. The acceptor has that privilege within certain limits. This may be done by (1) a conditional acceptance ; (2) a partial acceptance ; (3) acceptance changing the terms ; (4) by acceptance of one or more of drawees but not all. (See following three sections.)

150. A Conditional Acceptance is one in which the acceptor makes the payment conditional upon something contained in it, as : " Accepted, payable out of the funds of Amity Lodge, No. 32, A.F. & A.M., A. Mattison, Treasurer."

In such a case A. Mattison would not make himself personally liable.

151. Partial Acceptance is where the acceptor only agrees to pay part of the amount stated in the draft, as : " Accepted September 4th, 1910, for fifty dollars. W. Johnson."

In this case, say the draft was for $75, the drawer and indorser would have to be notified that it was only accepted for part. (See following section.)

152. Acceptance Changing Time.—An acceptor may change the time, as, for instance, from sixty to ninety days, but in all such cases where the original conditions of the draft are changed, the drawer and all indorsers are relieved unless they are notified. If, after receiving such notice, they do not within a reasonable time express their dissent, they are held to have given their assent to the change, and thus remain bound. The change of place for payment does not affect the validity of the draft, but the change of amount or time does. The holder also may refuse a "qualified acceptance" and treat the draft as dishonored, in which case it must be protested for non-acceptance.

153. Kinds of Drafts.—Drafts are divided into four classes, according to their wording, which fixes the time they are to run and the way in which the time is to be counted: (1) Demand Draft; (2) Sight Draft; (3) Drafts payable a certain time after "sight"; (4) Drafts payable a certain time after "date." The following sections will give a form for each kind and the law governing it:

154. Time Draft after Date.—

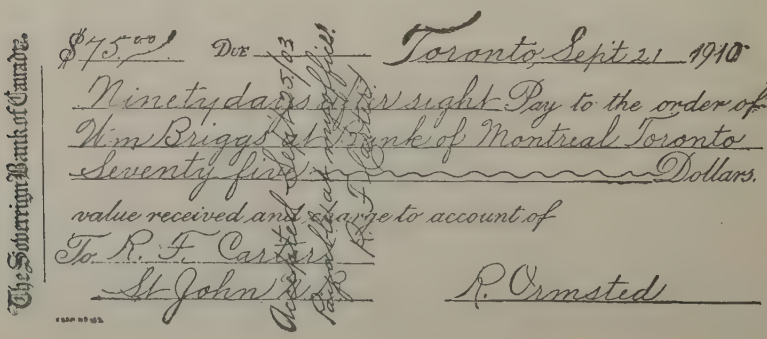
$100.00. SAULT STE. MARIE, August 31st, 1910.

Ninety days after date pay to the order of L. A. Green, at the Bank of Commerce here, One Hundred $\frac{xx}{100}$ *Dollars, for value received and charge to account of*

To W. WINTERS, D. A. McLAREN.
Toronto.

In accepting the above draft, which is payable after "date," W. Winters need not write the date of acceptance, as the time when it will mature is fixed in the draft, being made payable ninety days after its date, which would be November 29th, with three days' grace, making it December 2nd.

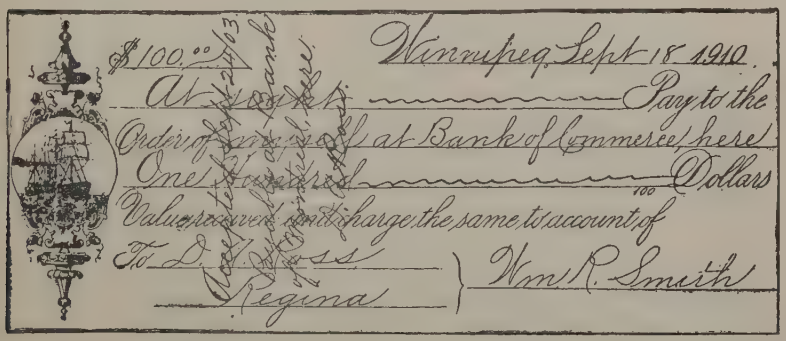
155. Time Draft after Sight.—The form shown on this page is a "time draft," drawn the 21st September, 1910, and payable ninety


The Sovereign Bank of Canada.
$75.00
Toronto, Sept 21 1910
Ninety days after sight Pay to the order of
Wm Briggs at Bank of Montreal Toronto
Seventy five
Dollars.
value received and charge to account of
To R. F. Carters
St John N.B.
R. Ormsted

days after *sight*. It was accepted September 25th, 1910, and would therefore fall due ninety days after that date, December 24th, and the three days of grace being added makes it legally mature December 27th, 1910.

It was made payable at the Bank of Montreal at Toronto, but when Mr. Carter accepted it, it will be noticed, he made it payable at his own office, and therefore the bank that presented it to him for acceptance will now have to present it at Mr. Carter's own office for payment when it falls due. Of course, Mr. Carter could have made it payable at some other bank at St. John, if he had wished to do so, but probably he did not have a bank account, and therefore it would be more convenient for him to pay it at his own office. After payment the money will be forwarded to the Bank of Montreal at Toronto, as Mr. Ormsted directed when he drew the draft.

156. Sight Draft.—The form shown on this page is a sight draft. It is drawn by Wm. R. Smith, of Winnipeg, on D. A. Ross, of



Regina. It will be noticed that Mr. Smith made it payable to himself, and therefore the *drawer* and *payee* are the same person in this case.

This form of draft is supposed to be paid when it is presented, but if the *drawee* needs the time he may accept it in the usual way and take the three days of grace. It will be seen by the form shown here that Mr. Ross took advantage of the three days of grace and "accepted" it in the usual way.

It was drawn September 18th, payable at the Bank of Commerce, Winnipeg, but in accepting it Mr. Ross made it payable at the Bank of Montreal, Regina.

Sight Draft and Time Draft are governed by the same laws for presentment and for payment.

It was accepted September 24th, and will therefore be payable September 27th. But September 27th falls on Sunday, and, therefore, the acceptance is legally due on Monday, September 28th.

In Newfoundland sight drafts have no days of grace.

157. Demand Draft.—

$100.00. ACTON, October 13th, 1910.

On demand pay to the order of H. C. Reilly One Hundred Dollars, for value received, and charge to account of

To BROWN BROS., H. P. MOORE.
Welland, Ont.

The above form of draft has no days of grace allowed, but is payable when demanded, or within the two days allowed by Statute for accepting.

If it is not paid when presented, the holder has the privilege of giving time. In that case it would be " accepted " as other drafts, placing the date of acceptance upon it. It would not commence to draw interest until it was presented, but would commence at that date to draw five per cent. The Statute of Limitations would also commence to run from the date of acceptance.

158. Collection of Notes and Acceptances.—Notes and drafts made payable at a certain place should be presented there for payment on the third day of grace, even if there is no indorser on them.

If there are indorsers on the bill, and it is not presented on the third day of grace, if that is a business day, the indorsers are discharged.

If the bill is payable at a bank, then it must be presented during banking hours; but if not at a bank, then the holder has the ordinary business day for presentment.

If there are no indorsers, then it need not necessarily be presented on the date of maturity, but must be presented for payment before any action is taken, or the holder would likely be saddled with the costs, and possibly lose the interest after maturity as well.

CHAPTER VIII.

INDORSEMENT.

Purposes of Indorsement—Four.
Forms of Indorsement—In Blank; In Full; Restrictive; Qualified or Without Recourse.
Specific Indorsement—Several Forms.
Indorsement of Guarantee—Several Kinds.
Waiving Protest; Of Partial Payment; Relation between Indorsers; How to Hold Indorsers; Were to Present for Payment.
Protest—Noting for Protest; Protest by Magistrate.
"Without Prejudice"—Its Use.

159. Purposes of Indorsement.—Indorsements may be either (1) for the purpose of negotiation, (2) for additional security, (3) for the acknowledgment of a partial payment of the instrument, (4) for identification.

160. Forms of Indorsement.—There are several ways in general use of indorsing a note or draft to conform to the requirements of the business community in safeguarding the financial interests of the contracting parties. The following are in general use:

161. Indorsement in Blank.—

James Smith.

The name only is written across the back of the instrument. It holds the indorser liable for payment, and the note or draft may be transferred thereafter simply by delivery. This is the form usually practised unless circumstances advise a special form.

162. Indorsement in Full.—

Pay J. Murray or order.
James Smith.

This indorsement not only passes the title of the note to J. Murray and holds James Smith liable for payment if the maker fails, but it also makes it compulsory for J. Murray to indorse it if he wishes to transfer it to another person.

"Pay J. Murray" would also be an indorsement in full.

163. Restrictive Indorsement.—

Pay A. Sanderson only.
James Smith.

This indorsement not only transfers the title of the note, but it

restricts payment to A. Sanderson. It does not absolutely prohibit the further transfer of the bill, but it is evidence to third parties that other transactions may be depending on it, and therefore subsequent holders take it subject to the equities that may burden it when it receives the "restrictive indorsement."

There are various forms for this kind of indorsement, as for example: "Pay D for the account of H," or "Pay D, or order, for collection." If such bills are further transferred, the holders take them merely as agents of the first indorsee, and not as "holders in due course," and are subject to the same liabilities that the first indorsee had.

A note or bill payable to *bearer*, or to a certain person or bearer, cannot have its negotiability restricted by indorsement, but those using the word *order* may be so restricted, as shown above.

164. Qualified Indorsement, or Indorsement without Recourse.—

Without recourse.
James Smith.

or

Without recourse to me.
James Smith.

This indorsement transfers the bill, and frees the indorser from liability for payment. It is simply for the purpose of negotiation, and not security for payment. Banks, of course, would not ordinarily discount paper indorsed in that way.

165. Specific Indorsement.—

For collection only on account of
James Smith.

This is used to guard against loss in sending by post, or through other hands. Other wording of specific indorsement would be:

For discount only to credit of
James Smith.

For deposit only to credit of
James Smith.

For deposit only to credit of James Smith.
David Jones.

The last one would answer for a clerk who had not authority to indorse in his employer's name.

W. Carter is hereby identified.
James Smith.

This identifies Carter at the Bank without Smith incurring liability.

166. Indorsement of Guarantee.—

I hereby guarantee the payment of the within note.
James Smith.

With this indorsement it is not necessary to protest the paper. It is not necessary to express any consideration, as consideration is implied in negotiable paper.

Sometimes the following form is used:

For value received, I hereby guarantee the payment of the within note, and waive protest and notice thereof.
James Smith.

Or the following:

For value received, I hereby guarantee the collection of the within note.
James Smith.

In this last case the guarantor is not liable until a legal attempt to collect has failed.

167. Indorsement Waiving Protest.—

Presentation and protest waived.
James Smith.

This form of wording is usually employed when done before maturity to prevent protest. The following form is in general use when done at maturity to save cost of protest:

I hereby accept notice of non-payment and waive protest.
James Smith.

168. Indorsement of Partial Payment.—

Received on the within note, Aug. 26th, 1910, Twenty Dollars ($20.00).
Sept. 16th, 1910, Forty Dollars ($40.00). H. A.

It is usual in indorsing payments on a note to give the date and amount, and if different persons receive the money, the initials of the persons should be given.

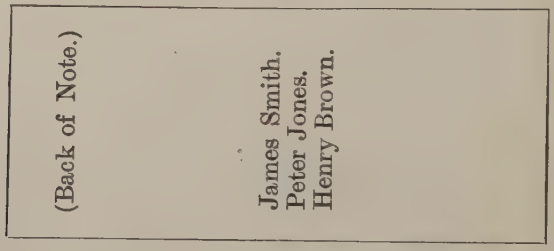
Oct. 10th, 1910. Paid on within, $10.00.
J. Parks.

In case as above, where the maker indorses his own payment, it affords the best of evidence of payment in a question of outlawing.

169. Relation Between Indorsers.—When two or more persons indorse the paper at *the same time* as security, and the maker fails to pay, the holder may sue all; or he may sue and recover from either one he thinks best. In case he collects the note from one, then that one may collect a proportionate share from each of the

others. If there were three of them, he could collect one-third from each of the other two; and if only two, then he would collect half from the other party.

But if the indorsements were at different dates, as they naturally would be where paper is indorsed as it is transferred, the liabilities are altogether different. In fact, where two or more indorsers are on a bill or note, each indorsement is deemed to have been made in the order in which it appears on the paper, until the contrary is proved. Therefore, where the indorsements are at different dates the first indorser is security for all after him, the second is security for the third and following, etc.



If the maker of such a note failed to pay, the holder could sue all the indorsers, or any one of them he might choose. Say there were three, as in the form shown on this page, and the holder sued and collected from all, one-third from each, then, in that case, Jones and Brown could collect what they paid from Smith, thus making him pay all, because he was surety for both. If Smith, however, proved to be insolvent, and Jones and Brown had to pay the whole debt, then Brown would collect what he paid from Jones, because Jones indorsed before him, and was, therefore, his surety. Jones would have to pay the whole debt, and look to Smith and the maker, who are both liable for it to him; and one or the other might sometime be in a position to pay. If Smith were sued either by the holder or one of the subsequent indorsers, and paid the amount, he could only look to the maker of the note.

170. To hold Indorsers Liable.—To hold an indorser liable for payment on a note or bill that is not paid at maturity, it is necessary:

1. To present the note or bill for payment on the third day of grace and during business hours. If this is not done, the indorsers are free.

2. If it is not paid, then the paper may be protested, and a notice

of the protest must be sent to each of the indorsers intended to be held.

3. In most cases it is not necessary to protest; but if it is not protested, the *notice* of the *dishonor* must be sent just the same. This notice must contain the following three facts: (1) That the note or bill (giving its date, amount, name of maker, indorser, etc.) had been presented for payment; (2) That payment was refused; (3) That the holder looks to him (the indorser) for payment. This notice may be sent by a notary, or the holder himself may send it.

An oral notice is also legal, but it is always better that it be put in writing.

It may be sent merely as a letter, but stating clearly the three facts above mentioned.

If the letter is not registered, it would be advisable to have a witness to its contents, and delivery to the post-office, or have some person deliver the letter to the post-office who can swear to delivery. A notary delivers his notices at the post-office himself.

The indorser might not receive the notice for several days or weeks after, but that would not make any difference so long as it was mailed to his supposed address. The notice should be sent within twelve hours. A similar notice is also sent to the maker or drawer; in fact, to every name appearing on the paper.

171. Place of Presentment of a bill or note for payment:

1. At the place specified in the paper.

2. If no place of payment is specified then at the address of the acceptor.

3. If no address is mentioned in the bill, then at his place of business, if known; if not known, then at his ordinary place of residence.

4. If neither is known, then at his last known place of business or residence, or wherever he may be found.

5. Where the place of payment specified in the acceptance is any city, town, or village, and no place therein specified, the bill will be presented to the drawee's or acceptor's known place of business or residence, and if there is no such place found, then at the post-office, or principal post-office is sufficient.

172. Protest is a formal written notice by a notary public, or, in his absence, a magistrate, that a bill or note was on a certain day presented for payment or acceptance, and that such payment or acceptance was refused, thereby making a claim against the drawer, indorsers and acceptor (if any) for the amount of the bill, including costs. It must contain the three facts stated in Section 170. A copy of the notice is sent to each name on the bill.

Generally it is not necessary to protest, but a formal written notice of the dishonor sent to each of the indorsers would answer the same purpose.

It is necessary to protest foreign bills of exchange if not paid at maturity, in order to hold the drawer and indorsers.

In Quebec it is also necessary to protest an Inland bill, in order to hold drawers and indorsers.

A bill can be protested only at the place where it was dishonored, or at some other place in Canada within five miles of the place of presentment and dishonor.

A bill presented through the post-office and returned dishonored, may be protested at the place where it is returned on that day or the day following.

When an acceptor becomes bankrupt, or suspends payment before maturity, the holder of a bill may protest it for better security against the drawer and indorsers.

173. Protest for Non-payment.—The following form of protest of a note payable to Henry Brown at the ~~Bank of Ottawa~~, Toronto, signed by John Smith and indorsed by J. W. Jones, of Brampton, Ont., will show the routine followed by a notary in protesting negotiable paper:

ON THIS 10th day of January, in the year 1910, I, M. A. Brown, Notary Public for the Province of Ontario, dwelling at Toronto, in the Province of Ontario, at the request of Henry Brown, did exhibit the original PROMISSORY NOTE, whereof a true copy is hereunto annexed unto the teller of the Merchants Bank (Promisor if the note was not payable at the Bank), and speaking to him did demand payment thereof; unto which demand he answered: "No funds."

WHEREFORE I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the Promisor and indorsers of the said Note, and other parties thereto or therein concerned for all costs, damages, and interest present and to come for want of payment of the said NOTE. All of which I attest by my signature.

M. A. BROWN,
Notary Public.

(See previous sections in cases where the paper is not protested.)

174. Notice to Indorser of Note.—

Toronto, January 10th, 1910.

To J. W. Jones, Brampton, Ont.

Sir,—

Mr. John Smith's Promissory Note for $65.50, dated at Brampton the 7th day of October, 1909, payable three months after date to Henry Brown or order, and by you indorsed, was this day, at the request of Henry Brown, duly protested by me for non-payment.

M. A. Brown,
Notary Public.

175.—Forwarding Notice.—When an indorser receives a notice of protest, if there is a previous indorser on the paper, he should immediately forward the protest notice to such indorser, in order to hold him liable in case the holder neglect to notify him.

176. Noting for Protest.—Where a bill or note cannot be paid on date of maturity, it may be "noted" for protest, when it will be held over for a day. This is done by the notary public. If not then paid the paper must be protested the next business day.

177. Protest by Magistrate.—When there is no notary public, or none whose services can be obtained at the place where the paper is dishonored, any Justice of the Peace, resident at the place, may present and protest the paper and give the necessary notices.

178. Without Prejudice.—The two words, "without prejudice," have great importance when used in a legal sense. This use can be best shown by an illustration, *e.g.* : Two persons are at variance and likely to be drawn into court, but the one desires amicable settlement, and is willing to make any reasonable concession to effect it. He, therefore, takes these two words, *without prejudice*, and writes them across the upper left-hand corner of his letter, or in the body of the letter, and then makes his proposition, whatever it might be. The effect of those words is, that if the other party should not accept the proposition and terms thus offered, but the case goes to suit, this letter cannot be used in court as evidence against the writer. Hence, by using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not jeopardized. A convenient form at the beginning of the letter would be similar to the following :

Dear Sir : "Without prejudice" I hereby make you the following proposition, etc.

Also, a debtor who may be taking the benefit of the Statute of Limitations may, by using these words, frankly acknowledge the

justice of the claim against him, and assure his creditor that he will still pay him, or may even pay money to him, without reviving the *legal liability*. Also, in offering to make payment on a disputed account or claim by way of a compromise, these words prevent the offer being held to be an acknowledgment of the claim. Every man should be familiar with their use, and make use of them whenever occasion requires, instead of trusting to the other party's honor.

CHAPTER IX.

BANKS AND BANKING.

Chartered Banks—Under control of Federal Government, Private Banks—Incorporation of Banks—Capital, Government Deposit, Note Currency, Ten-year Charter, 90 day Suspension of Payments—Business of Banking—Means at its Disposal, What Businesses not to engage in, Bank Discount, Collection fees. Security for Note-holders—Threefold Guarantee—Bank Reserves.
Cheques—Definition; Use of Cheques; Presentment of Cheques; Where; Forged Cheques; Cheque without Funds at Bank; Crossed Cheques—Bank Draft. Deposit Receipt; Not Negotiable—Warehouse Receipt; Negotiable. Letter of Credit; Circular Letter of Credit.

179. Chartered Banks.—At Confederation, 1867, the business of banking in Canada came under the jurisdiction of the Federal Parliament.

All banks organized since that date have taken their charters from the Dominion Government, and the banks previously organized either by Imperial or Provincial Parliaments as their charters expired, have been renewed by the Dominion Government.

Private persons or corporations may engage in the business of banking, but cannot issue paper currency nor use the word "Bank," "Banking Company," "Banking House," "Banking Association," "Banking Institution," or any similar term, on their sign, or in connection with their name in business in any way. Penalty for a violation of this section of the Act is a fine not exceeding $1,000, or imprisonment not exceeding five years, or both, in the discretion of the court.

180. Incorporation of New Banks.—Banks are organized and incorporated in much the same manner as are other Stock Companies by opening a Stock Book, soliciting subscribers, appointment of Provisional directors, and then applying for charter.

At present the capital stock in a new Chartered Bank must not be less than $500,000 divided into shares of $100 each.

At least $250,000 of the $500,000 must be paid in, which sum in

actual money, must be temporarily deposited with the Minister of Finance and Receiver-General.

There must not be less than five Provisional Directors, nor more than ten.

The Bank must not commence business or issue notes until it has received the certificate permitting it to do a banking business.

Upon the issue of the certificate the $250,000 deposited with the Treasury Department is returned to the bank except $5,000, which is retained until the time for the annual adjustment when this deposit must be made equal to five per cent. of the average amount of its note circulation from the time it commenced business to the time of such adjustment, in June each year.

The charter carries with it the privilege of issuing a bank-note currency, and establishing branches, which are not required to deposit anything as security.

In Canada the charters of all the banks expire at the same time, no matter when the bank was started. The period is ten years and renewable for ten years more, and so on from one period to another. The present charters will expire July 1, 1921.

If a bank suspends payment for ninety days it loses its charter, and its affairs are wound up.

181. The Business of Banking is dealing in money and debts, and includes the issuing of notes for circulation, receiving deposits, discounting and collecting commercial paper, and in a general way dealing in money, and documents payable in money, domestic and foreign public securities, etc.

The means at its disposal are:

1. The capital paid in by the shareholders;
2. The deposits of its customers;
3. The amount of its own notes it can keep out in circulation.
4. The money in transmission through it.

The chartered banks are prohibited from engaging in trade, or dealing in goods or lands, or lending money upon their security; but they may lend against warehouse receipts, bills of lading, stocks, bonds, debentures, etc.

They cannot take a mortgage on real estate or on personal property as security for a loan, but after a loan has been made upon other securities they may take a mortgage as additional security.

They must not lend money upon their own stock, or the capital stock of any other Canadian bank. They cannot hold real estate that comes into their hands for more than seven years except for use of the bank unless the time is extended by the Treasury Board, which in any event must not exceed five years longer.

Banks may issue as much note currency as the requirements of trade demand, up to the full amount of their unimpaired paid-up capital, but no more.

Notes smaller than $5.00 are issued by the Dominion Government, but the $5.00 notes and over that in multiples of fives by the banks.

The various banks send back the notes of all other banks it receives each day for redemption and pushes out its own notes, hence redemption is going on every day.

When requested to do so, every chartered bank is required to make payment in Dominion notes to the extent of $100 in any denominations as may be desired.

Each bank is required to keep in the hands of the Dominion Government a deposit equal to five per cent. of its average circulation, which aggregate fund is called the " Bank Circulation Redemption Fund," and should the liquidator fail to redeem all the notes of any bank that may have failed, recourse may be had to this fund. And if this fund should not suffice to redeem all the notes of the insolvent bank, then all the other chartered banks are required to contribute *pro rata* an additional sum sufficient to make good the deficiency.

Collection fees allowed to banks are: Under thirty days, one-eighth of 1 per cent.; thirty days and over but under sixty days, one-fourth of 1 per cent.; sixty days and over but under ninety days, three-eighths of 1 per cent.; ninety days and over, one-half of 1 per cent. These fees, however, are now virtually obsolete, as the banks are not charging as much.

Agents' fees when collected by other banks in addition. For small sums a minimum fee of fifteen cents is charged.

182. Security for Note-Holders and Depositors.—Our bank notes are secured:

1. By being made a first charge on the assets of the bank.
2. By the double liability of the shareholders, for all banks except the Bank of British North America.
3. The deposit with the Government, called the " Bank Circulation Redemption Fund," which is a sum equal to five per cent. of the average note circulation of all the banks in the Dominion.

With this deposit with the Government, the double-liability of the shareholders, together with the general assets of the bank, note-holders are amply secured, and it is scarcely possible for depositors to lose.

As the bank notes draw five per cent. interest from the date of suspension until the liquidator announces that he is ready to redeem them, other banks will cash them at par, and are required by the Bank Act to do so.

As banks are required to make a full return to the Government

each month of their circulation and deposits and the amount of their reserves, any bank attempting to lessen its reserve below a reasonable percentage of its circulation would soon lose public confidence enough to put depositors on their guard. The total amount of the note circulation must never exceed the amount of the unimpaired paid-up capital of the bank, and no dividend or bonus must be paid out that will impair the paid-up capital.

183. Cheques.—A cheque is a demand draft on a bank. They have no days of grace. If the drawer has no funds at the bank with which to redeem them when presented for payment, they may be protested the same as other drafts.

Formerly cheques were usually written payable to *bearer*, but it is preferable to use the word *order*.

The form shown below is the standard form now used in the United States, and quite generally in Canada.

Toronto, August 16, 1910

Imperial Bank of Canada

PAY TO THE ORDER OF

A. J. Brown $200.00

Two Hundred ..... xx/100 Dollars

No. A. Montgomery.

A cheque is not legal tender, and a person cannot be compelled to accept it in payment for a debt.

184. Use of Cheques.—The practice of making payment by cheque is becoming general. It saves time in counting change, prevents mistakes in counting, and saves liability of loss by theft. A returned cheque from the bank is also the best evidence of payment a man can have, and should be filed away the same as a receipt.

Cheques are negotiable the same as notes are, and subject to the same laws that govern bills of exchange payable on demand.

A cheque that is post-dated is held not to be a cheque, but a bill of exchange payable at maturity.

A cheque may be made to answer for a receipt by inserting after the amount what it was given for, as "in full of account," or "for rent," etc.

Cheques operate as payment until presentment has been made and refused, when the debt immediately revives.

185. Certified or Marked "Good."—In sending cheques to strangers or long distance the drawer will sometimes have the ledger-keeper of the bank "certify" or mark them "good." In that case it is immediately charged against the drawer's account in the bank, just the same as though he had drawn out the money himself. It is done by writing the word "certified" or "good" on the face of the cheque, giving the name of the bank, and that of the ledger-keeper.

186. Presentment of Cheques.—A cheque received should be presented for payment not later than the following day, or forwarded if the bank is in a different place or town. Even twenty-four hours, under certain circumstances, has been held to be an unreasonable time to hold it, and the holder in such cases must bear whatever loss may occur.

Presentment and notice of dishonor, if not paid, are just as necessary with cheques as with other bills, to render the drawer and prior indorsers liable, if they have been transferred.

A cheque refused to be paid by a bank upon which it was drawn should usually be immediately returned to the drawer if it had not previously passed through other hands.

187. Paying Forged Cheques.—If a bank pays a forged cheque the bank is the loser. It is the same with "raised" cheques, where they have been raised from a smaller to a larger sum, the bank loses the difference unless it can be shown that the drawer's carelessness in writing the cheque facilitated the forgery. For instance: If you were to write a cheque for "five" dollars, and commenced so far from the end of the paper that the forger had sufficient room to write "fifty" before the five, thus making it "fifty-five," and the imitation in the writing was good, the bank would not be held responsible. Also in cases where the drawer is careless in writing his signature, having no uniform style, so the bank could not possibly identify his signature, then the bank would not be held responsible for payment of a forged cheque.

188. Cheques without Funds at Bank.—For a person to obtain goods or money by giving a cheque when he had no account at the bank would be obtaining the goods or money under false pretences, the penalty for which is three years' imprisonment. But if the money were deposited in a bank to cover the cheque before its presentment, there would then be no fraud in it, although the transaction would be irregular.

But simply not having enough money in the bank to cover the cheque would not incur any such penalty.

189. Crossed Cheques.—Where it is desired that a cheque should not be negotiable, except through a bank, it may be "crossed." The crossing may be either general or special.

1. A cheque is crossed generally when it has—

(*a*) Two parallel transverse lines drawn across its face, or

(*b*) Two parallel transverse lines drawn across its face with the word Bank written between them, with or without the words "not negotiable," or,

(*c*) Two parallel transverse lines, either with or without the words "not negotiable."

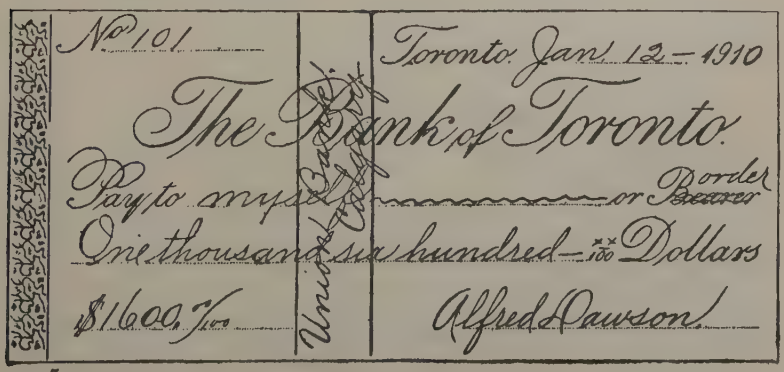
2. A cheque is crossed specially when the name of a bank is added, as "Bank of Toronto," in which case the cheque is crossed to that particular bank.

3. Any person receiving an uncrossed cheque is at liberty to cross it either generally or specially, or if it is crossed generally when he receives it he may cross it specially.

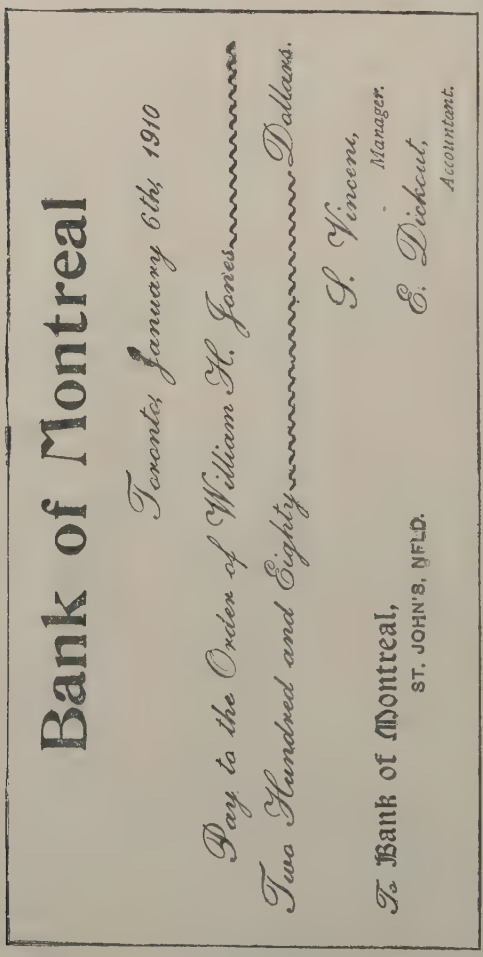
The drawer only can uncross a cheque that has once been crossed by writing between the lines "pay cash," and initialing it, after which it will be negotiable again.

Crossed cheques are extensively used in England where the banks are not held responsible for the indorsation of cheques, hence business men to be on the safe side very commonly "cross" their cheques so they cannot be paid in cash over the counter, but must be paid through a customer's account, who being personally known at the bank, payment to the wrong person would be impossible. But in Canada the banks are held liable for the indorsation of cheques, hence no need of "crossing." Cheques are here so extensively used in payment of wages, etc., paid to thousands of persons who have no account at a bank that "crossing' is scarcely ever resorted to.

190. Form of Crossed Cheque, which constitutes a genuine safety transfer cheque.



Drovers and other business men who receive large sums of money in the city would find safety in using these "crossed cheques." Instead of carrying the money home with them they could deposit it in one of the city banks, and take a "certified" cheque crossed to their home bank. In case of robbery no person could possibly make any use of such cheque, as it is absolutely non-negotiable, and only payable at their own town bank and through their own account.


Bank of Montreal
Toronto, January 6th, 1910
Pay to the Order of William H. Jones
Two Hundred and Eighty Dollars.
L. Vincent, Manager.
E. Dickout, Accountant.
To Bank of Montreal,
ST. JOHN'S, NFLD.

191. Bank Draft is a draft of one bank on another, payable on demand. The cost to the remitter is usually one quarter of one per cent. more than the face, but it is cashed at par by the bank on which it is drawn. It is a safe medium for the transmission of money to others, or in carrying sums of money when made payable to your own order. When drawn on a foreign country they are called Foreign Bills of Exchange.

192. Warehouse Receipts are receipts given by the owners of warehouses, elevators, etc., acknowledging the receipt of goods and chattels stored or kept for the owners of such property. These receipts are negotiable by indorsement, and are used largely as collateral security by business men along with their notes for advances by banks.

The following is one form of such receipt:

WAREHOUSE RECEIPT.

RECEIVED *in Store from W. H. Hamilton, in.....*
Warehouse at 29 Wellington Street, Toronto, Goods as per Schedule of the total value $950.00, to be delivered pursuant to the order of W. H. Hamilton to be indorsed hereon, and on production of this receipt only.

This is to be regarded as a receipt under the provisions of the Revised Statutes of Ontario, Chap. 122, and of the Revised Statutes of Canada, Chap. 120, intituled, "An Act respecting Banks and Banking," as the same may be amended by subsequent Acts. Clauses of the Criminal Law relating to Warehouse Receipts are printed on the back hereof.

EMPIRE WAREHOUSE CO., LIMITED.

TORONTO, *Jan. 10th, 1910.*

193. Letter of Credit.—It is a common custom for persons going to a foreign country on business, to deposit money in a bank at home and receive from such bank a letter of credit upon a bank in the country where the money will be needed, or upon an agent of the bank in such country, authorizing such bank or agent to cash the drafts or cheques of the payee up to the limit stated in it. This letter of credit costs nothing except its face value, and enables the holder to obtain funds in the foreign country as readily as he could in his own town, without the risk of carrying it with him. It is not a negotiable instrument.

Persons of well-known financial standing, or one who has a satisfactory guarantor, may obtain a letter of credit from a banking house without depositing the money until he returns.

194. Circular Letters of Credit are commonly used by *travellers*, as by this means money may be obtained in various countries the same as by the ordinary letter of credit in a particular country. The following is one form of a Letter of Credit:

CIRCULAR LETTER OF CREDIT.

Issued by .....

No..... £.....*Stg.*

THE CANADIAN BANK OF COMMERCE,

*Ottawa,.....*190...

To the Banks named in our Letter of Indication (Introduction).

This letter will be presented to you by.....
in whose favor we have opened a credit of.....
Sterling, to be availed of by his (her) demand drafts on the Bank of Scotland, Lothbury, London, which we request that you will negotiate at the current rate of the day, less your usual charges.

The drafts should bear the following clause:

Drawn under..... credit No.....;

they should be drawn within one year from date hereof, and date and amount of each draft cashed are to be entered in the space provided on the back of this letter.

Mr..... is provided with a copy of our Letter of Indication, wherein.....signature may be found.

For the Canadian Bank of Commerce,

.....

.....

This letter of credit is accompanied by a letter of introduction, bearing the signature of the payee, also a list of agents or correspondents where the money may be drawn.

195. Deposit Receipt, usually called "certificate of deposit," is a receipt given by a bank for money deposited. It bears interest, but is not negotiable in Canada. In a legal sense it does not differ much from any other form of receipt. In most of the States of the American Union, except Pensylvania, it is classed as a negotiable instrument.

The following is one form of such receipt:

FORM OF BANK DEPOSIT RECEIPT.

(*Name of Bank.....*)

$ ..... *No.* .....

Toronto,....., 1907.

RECEIVED *from.....*

the sum of.....100 Dollars, which amount will be accounted for to..... by this Bank, and will bear interest at the rate of..... per cent. per annum until further notice. Fifteen days' notice of withdrawal to be given, and this receipt to be surrendered before repayment of either Principal or Interest is made.

No interest will be allowed unless the money remains in the Bank .....months.

This Receipt is not negotiable.

For .....(Bank).

....

Accountant. *Manager.*

CHAPTER X.

DUE BILLS, ORDERS AND RECEIPTS.

196. Due Bills.—A due bill is a written acknowledgment of a debt. They are not negotiable, either by delivery or by indorsement, no matter if the word *bearer* or *order* is used, because they are not a promise to pay.

They may be transferred by *assignment*. The following is a very good form written across the back: "For value received, I hereby assign to James Smith the within due bill. W. WINTERS." (See Section 280.)

James Smith should notify the maker of the due bill that he had purchased it, and that the money is to be paid to him only.

197. Forms of Due Bills.—

1. Payable in goods.

SANDWICH, Aug. 4th, 1910.

Due James Smith Ten Dollars in goods from our store.

10.00. HIBBARD & SONS.

Store due bills are frequently written due *bearer* instead of using the person's name.

2. Payable in money.

LINDSAY, Aug. 4th, 1910.

Due James Smith for value received Ten Dollars.

$10.00. W. LAUR.

3. An I.O.U. is a short acknowledgment of a debt. They are convenient for small money transactions and are payable in cash, but are scarcely to be commended. The person's name is not usually inserted, but it is better to take time to enter the name. They are not a promise to pay, hence not negotiable.

HAMILTON, Aug. 14th, 1910.

I.O.U. Twenty-five Dollars.

W. WINTERS.

198. Orders.—An order is a written request to deliver goods, or money, on account of the person making the request. When such order is received and acceded to, the person signing the order should be charged for the amount. If the order is in favor of a third party, the name of the party receiving the goods or money should be mentioned in the entry, and the order preserved until settlement is made.

They differ from a draft in being more simple in form and generally for goods instead of for money. If the drawee owes the drawer the amount payment can be enforced by the payee.

1. SARNIA, Aug. 12th, 1910.

Mr. James Smith :

Dear Sir,—Please pay to Henry Brooks or order Thirty-five Dollars and charge the same to account of

$35.00. A. B. BARRON.

2. MORDEN, MAN., May 19th, 1910.

Mr. W. Winters :

Dear Sir,—Please let Mr. H. Brooks have from your store Fifteen Dollars in such goods as he may wish and charge to account of

JAMES SMITH.

3. AYLMER, May 26th, 1910.

Mr. W. Winters :

Dear Sir,—Please pay to the bearer, Mr. H. Brooks, Thirty-five Dollars from the funds left with you yesterday.

W. A. PHILLIPS.

199. Receipts.—A receipt is a written acknowledgment of having received a certain sum of money or other value.

A receipt is not absolute evidence of payment, but it throws the burden of proof upon the party who impeaches it. It may have been obtained before payment was made, and then payment refused, or it may have been obtained through fraud, or for some other purpose; but the burden of proof rests upon the party who gave it to show wherein it is not valid.

A receipt given in full of all demands to date would not bar the creditor's claim for an additional item of account if an error had been made which he could satisfactorily prove. It is evidence only that so much value had been received or money paid.

A cheque received, and having marked on it "in full of all demands" or "in full of account," which does not cover the account in full, may still be endorsed and cashed at the bank in the usual way

without losing the balance of account. If the debtor inserted those words in the cheque through mistake the court would correct it, if proven; and if done intentionally the court would also order the correction. If, however, it is stated that the amount should be paid on the condition of its being received as payment in full of account, then its acceptance and indorsement by the creditor would cancel the balance of debt. It would then be a "compromise" settlement and binding.

It is a creditor's duty to give a receipt on the payment of a debt, but generally he cannot be compelled by law to do so. When he holds a debtor's note, or any other security, he is compelled to surrender it on payment, also a mortgage when paid.

When a receipt is taken from an agent or collector it should have the name of the principal on it, as well as that of the agent or collector, who should always designate himself as "agent" or "collector."

When a receipt is likely to be refused, payment should not be made except in the presence of witness.

When a receipt is given for money paid on a note or other written contract, and an indorsement made, the latter should state the fact that a receipt was given, and the receipt should state that the amount had also been indorsed on the note, or other instrument.

The following forms of receipt are in general use:

200. Receipt on Account.—

BROCKVILLE, May 28th, 1910.

Received from James Smith One Hundred Dollars on account.

$100.00. H. SUMMERS.

201. Receipt in Full of Account.—

THOROLD, Aug. 28th, 1910.

Received from Leslie McMann One Hundred Dollars in full of account to date.

$100.00. J. BATTEN.

202. Receipt for Rent.—

PARIS, June 1st, 1910.

Received from James Smith One Hundred Dollars for three months' rent of store, No. 4 St. Paul Street, due May 1st.

$100.00. J. BATTEN, Jr.

203. Receipt for Money at the Hands of a Third Party.—

FOREST, July 6th, 1910.

Received from Peter Smith, by the hands of A. Young, One Hundred Dollars, in full of all demands.

$100.00. H. BATTEN.

204. Receipt for Legacy.—

KILLARNEY, MAN., July 2nd, 1910.

Received from J. E. Anger, executor of the last will and testament of Henry Williams, of Winnipeg, deceased, the sum of Four Hundred Dollars, in full of a legacy bequeathed to me by said will. ALBERT HOWIE.

205. Receipt by Clerk.—

WELLAND, May 12th, 1910.

Received of Peter Smith Forty Dollars, in full of account.

$40.00. GEO. BURGAR (*per* Jones).

206. Receipt for Note.—

BELMONT, MAN., May 16th, 1910.

Received from Peter Smith note of four months from this date for One Hundred Dollars, in full of account.

$100.00. C. E. WEEKS.

207. Receipt for Property Held in Trust.—

SYDNEY, N.S., Aug. 16th, 1910.

Received from Peter Smith one Gold Watch, to be held in trust for him, and delivered to his order without expense.

J. B. MACK.

208. Receipt for Payment of Interest on Mortgage.—

TRURO, N.S., June 1st, 1910.

Received from Peter Smith, One Hundred Dollars, being amount in full for six months' interest, due September 1st, on his mortgage, in my favor, dated October 2nd, 1908, which amount is also indorsed on the mortgage.

$100.00. O. L. HORNE.

209. Receipt for Money on a Note.—

GRIMSBY, May 4th, 1910.

Received of Peter Smith One Hundred Dollars, in part payment of his note in my favor, dated September 4th, 1909, which amount is also indorsed on the note.

$100.00. D. SYKES.

210. Release.—A release is a written discharge of a debt, claim or demand held against one person by another. No special form of wording is necessary, simply using words that convey the intention to release, acquit, and discharge the person from the debt or obligation. It is given under seal, and will discharge any debt whether acknowledged or not.

Releases may be individual, as when one person releases another from a debt or demand, or they may be mutual, as when two persons have been trading with one another, and have contra accounts running for a considerable time. When a settlement is made, they very frequently release each other from all demands. A release will bar out any chance of opening up the matter again by showing that a mistake had been made, whereas a mere receipt in full of all demands would not do so. And they should be used more frequently than they are.

211. General Form of Mutual Release.—

This Indenture made the 17th day of June, A.D. 1910, between Henry Hibbard, of the first part, and Benjamin Disher of the second part, all of the Township of Bertie, County of Welland, Province of Ontario, merchants.

WHEREAS, there have been divers accounts, dealings, and transactions between the said parties hereto, respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have respectively agreed to give each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed:

Now, therefore, these Presents Witnesseth that in consideration of the premises and of the sum of one dollar of lawful money of Canada to each of them, the said parties hereto, respectively, paid by each of them, at or before the sealing and delivery hereof (the receipt of which is hereby acknowledged), each of them, the said parties hereto, respectively, doth hereby for himself, his heirs, executors, administrators and assigns, remise and release and forever acquit and discharge the other of them, his heirs, executors, administrators and assigns, all his and their lands and tenements, goods, chattels, estate and effects, respectively, whatever and wheresoever of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise, howsoever, which either of the said parties now have, or has or ever had, or might or could have against the other of them, on

any account whatsoever of and concerning any matter, cause or thing whatsoever between them, the said parties hereto, respectively, from the beginning of the world down to the day of the date of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of E. ANTHONY.

HENRY HIBBARD. (L.S.)
BENJAMIN DISHER. (L.S.)

CHAPTER XI.

STATUTE OF LIMITATIONS.

Promissory Notes; Acceptances; Book Accounts; Judgments; Mortgages; Devises; Arrears of Legacy; Dower; Chattel Mortgages; Ownership by Possession; Reviving Outlawed Debts; Exceptions to Outlawing.

212. The time within which the various kinds of debt must be paid, or action commenced to recover payment, is fixed by Statute, and if action is not commenced within that time they are said to be outlawed. The debt is not cancelled, but the creditor loses his right to sue and recover payment by legal process. (For exceptions see Section 222.)

Action is commenced by the issue of a summons or writ. It is not required to obtain judgment within the specified time, but merely that the writ be issued.

The Statute limiting the time within which an action at law must be commenced for the collection or enforcement of a claim is called the Statute of Limitations. The time limit for the various kinds of debt is as follows:

213. Promissory Notes and Acceptances in all the Provinces of Canada, except Quebec, outlaw in six years after maturity or last payment made on either interest or principal. The date of maturity is the last day of the three days of grace, hence the time commences to count the day after the third day of grace.

Any payment, or written acknowledgment of the debt, will keep the paper alive six years from that date as against the party making the payment or the acknowledgment, but not against any other person whose name is on the paper.

In Quebec the time is five years instead of six. The law is the same in other respects, except that the debt as well as the right of action is barred in Quebec.

In Newfoundland and England the time is also six years.

Demand notes are deemed to be due when they are made, and demand acceptances when they are accepted; therefore, six years from those dates they are outlawed as far as the maker or acceptor is concerned. But it is different with indorsers on such paper, as no right of action accrues against them until a demand for payment has been made and dishonored, and therefore action on the bill is not barred against them until six years from date of demand. But a demand note having an indorser must be presented for payment within a "reasonable time," otherwise the indorser is discharged.

214. Book Accounts.—Actions for the recovery of merchants' accounts, and all other debts founded upon any lending or other contract (not under seal), for the recovery of rent, or interest, or arrears of legacy, or arrears of dower, must be commenced within six years after the cause of action arose, or the last payment, or a written acknowledgment of the debt or claim. This applies to all the Provinces (except Quebec), Newfoundland and England.

In the Province of Quebec it is five years for such accounts. Professional fees, as of doctors and advocates, justices, notaries, and rents, interest and commercial matters in general are barred after five years from maturity or last payment. Slander, libel and wages of employees engaged for a shorter period than one year outlaw in one year. Damages for injuries and wages for employees engaged for a longer period than one year outlaw in two years. Breaches of contract, restitution to minors, rectification of tutors' accounts, contractors' and architects' warranty outlaw in ten years. Judgments in thirty years, if no action is taken.

In all the Provinces accounts are, with regard to outlawing, "itemized," that is, each item or purchase is treated as a separate account, and all moneys paid on it are, unless otherwise specified, applied to the oldest items. This particular feature of accounts should be remembered.

They commence to outlaw from the date of purchase unless there is a time fixed for payment.

The various purchases on different dates being put into one bill and rendered to the debtor does not merge them into one debt so as to change the time for outlawing of any particular purchase, but they all remain entirely separate, and six years from the date of purchase of each item it is outlawed, unless there has been a part payment made on that individual purchase, or a written acknowledgment.

(Five years for Quebec.) A part payment on a running account does not keep the whole alive.

The items of an account may, however, be merged into a single debt by what is called an "Account Stated." To form an "account stated," an agreement must be come to between the debtor and creditor by which the whole account is *acknowledged*. Where this has not been done, if the merchant wants a part payment to keep all the items of the account alive, he must apply part on every individual purchase, even if it is not more than twenty-five cents on each. This can be done by a day book entry without saying anything to the debtor. The following or similar words would answer: "Received from James Smith $4.50 on account, an equal amount to be applied on each purchase up to date." Give the customer the ordinary receipt on account without any reference to the special application you have made of the payments.

A definite formal settlement in writing between the parties, even though no money is paid, will serve to extend the time for another period of six, or five, years as the case may be.

Interest.—Interest on all forms of debt is barred in six years after it is due or the last written acknowledgment given. Quebec it is five years.

215. Judgments.—Judgments in Manitoba outlaw in ten years from date when entered, or last execution on them, or the last written acknowledgment; in Alberta, Saskatchewan, Yukon, and North West Territories twelve years; in Ontario, Nova Scotia, Prince Edward Island and Newfoundland twenty years.

In Quebec they remain in force for thirty years; Newfoundland, twenty.

In New Brunswick judgments in the Justices, Parish Court, Commissioners' or Stipendiary Magistrates' Court outlaw in six years if no execution issues, but in County or Supreme Court twenty years. Executions filed against lands must be renewed or they will outlaw in same time that mortgages do; in Ontario ten years.

216. Mortgages on Real Estate in Ontario and Manitoba outlaw in ten years after maturity or last payment on either principal or interest; in British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland they outlaw in twenty years; in Alberta, Saskatchewan, North-West Territories and England in twelve years, and in Quebec thirty years. Mortgagor's equity of redemption is barred in Alberta, Saskatchewan, North-West Territories and England in twelve years, in Manitoba and Ontario ten, and other Provinces and Newfoundland twenty years after mortgagee takes possession, unless his right is acknowledged in writing.

In each Province and country a part payment of either principal or interest, or a written acknowledgment of the debt or right will extend the time for another period of ten, twelve, twenty or thirty years, as the case may be.

Action upon bonds, covenants or any instrument under seal, except mortgages on real estate, may be commenced any time within twenty years.

217. Devises and Legacies are barred in the same length of time that mortgages on real estate are, from the time a right to receive it accrued, unless devisee were a minor or under some other disability, in which case the Statute of Limitations does not commence to run until the removal of such disability. If legacies are left with an executor or trustee as an *express trust* they never outlaw.

218. Dower.—The right to recover dower by a widow out of her deceased husband's estate is also barred in the same length of time a mortgage on real estate is barred. The right to dower accrues at the husband's death. Arrears of dower barred in same time that interest is.

219. Chattel Mortgages as between debtor and creditor in all the Provinces (except Quebec) and Newfoundland will hold the claim for twenty years, being an instrument under seal and not affecting interest in lands. As against other creditors, however they only hold the property as security for a period varying in the different Provinces from one to five years. (See Section 216.)

220. Ownership by Possession.—A person having continuous peaceable possession of land (except in trust), paying taxes on same and treating it as his own, acknowledging in no way the right or title of any other person for the same, becomes the owner of the property in Ontario and Manitoba after ten years; in New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland in twenty years. In Alberta, Saskatchewan, North-West Territories and England twelve years, and in Quebec ten years, give a possessory title.

A person "squatting" on land to which he has no right, that is yet "in a state of nature"—usually called "wild land"—that has not been fenced or tilled or occupied, must occupy it for twenty years to get title to it, unless it can be shown that the rightful owner had knowledge that such party was in possession of it. If the grantee from the Crown, or his heirs or assigns, had no knowledge that such other person was occupying the ground, it would take twenty years' possession in all the Provinces, England and Newfoundland, to give the "squatter" a good title.

Land enclosed by a fence while the land is "in a state of nature,"

and subsequent survey showing the fence to include land belonging to an adjoining owner, the Statute of Limitations would not commence to operate until such survey and discovery.

In cases where a fence is fraudulently placed or removed, the Statute would not commence to run until the time the fraud is discovered.

Easements.—To acquire a prescriptive right to the use of a lane or way or drain over a neighbor's property, the right must be actually enjoyed by the party claiming the right without interruption for twenty years.

The rights of the Crown are not barred in these periods, but will hold for sixty years at least before being barred.

221. Reviving Outlawed Debts.—In promissory notes, acceptances and book accounts, a part payment or a written acknowledgment will revive them and keep them alive again from that date for a further period of six years, or five for Quebec. Mortgages, legacies, dower, rents, etc., are kept alive in same manner.

Money also paid by the debtor to the creditor on account, without any instructions as to what debt it should apply to, may be applied by the creditor to any such debt that has been barred by Statute, and thus reduce it. This cannot be done by a third party to whom such debt may have been transferred, neither does it revive the balance.

Payments of money on a promissory note by one of the parties do not prevent it from outlawing in six years (five for Quebec) so far as the indorsers are concerned.

Written acknowledgments from one joint debtor will not affect the other.

222.—Exceptions to Outlawing.—Bank bills or bank notes, or other evidence of debt issued by a bank, never outlaw by lapse of time.

Statute of Limitations does not apply to express trusts. For instance, a farm deeded in trust to a person for heirs or other persons would never become the property of the trustee by possession, even if he occupied it sixty years. To money left in bank in trust the Statute of Limitations does not apply, and no lapse of time will bar the right to recover it.

Also, where there is any legal disability on the part of either the debtor or creditor so that the action cannot be commenced, the time does not begin to count until the disability is removed. The Statute says: "Actions by or against minors, persons insane, or out of the Province may be commenced within the like period after the removal of the disability, as is allowed for bringing action in ordinary cases."

The disability, however, of whatever nature it is, must be in existence at the time when the debt became due, if a debt, or in other

cases " when the cause of action arose." If the debtor were living outside the Province at the time the debt fell due, the time for outlawing would not commence until he returned. If, however, he left the country after the debt was due and before action was commenced, it would then not form an exception, because action could have been taken to collect before he went away.

Disabilities, however, do not hold indefinitely, and each Province and country has fixed the limit, ranging, respectively, from twenty to forty years.

The absence of one joint debtor from the country does not prevent the Statute from running against the other.

CHAPTER XII.

CHATTEL MORTGAGES.

Chattel Mortgage—No Statutory Form ; Description of Property ; Must be a *bona-fide* Transaction to be Valid ; When to Register ; Removal of Mortgaged Goods ; Mortgagee's Optional Courses if not Paid at Maturity ; Causes for Taking Possession ; Renewal, When ; Assignment ; Discharges.

223. A Chattel Mortgage is a lien on personal property—goods and chattels. It is in reality a deed or conveyance of the property as security for a debt or for borrowed money, with a proviso that when the debt is paid the mortgage becomes null and void.

The debtor is called the mortgagor and the creditor the mortgagee. The effect of a chattel mortgage is practically the same as a bill of sale. It is a conveyance of the *title*, but not of the *possession*, of the property ; but the mortgagee may take *possession* of the property also on a breach of any of the covenants.

The Statutes do not give a form for chattel mortgages with which they are compelled to comply, nor define what covenants they shall contain ; therefore, to know what the covenants, provisos and conditions are, the mortgage itself must be carefully read.

In Quebec chattel mortgages are not used. Bills of Sale will hold the property as between the debtor and the creditor, but are not binding there against third parties unless the goods are taken possession of by the creditor.

224. Description of Property.—They must contain a full description of the goods and chattels, so they can be readily distinguished ; also, where they are located and whose possession they are in at the time.

225. Registration.—To hold the goods against judgment creditors, and subsequent purchasers and mortgagees in good faith for valuable consideration, the mortgage or bill of sale must be registered in the district where the goods are located within a specified number of days, together with two affidavits, one of a witness and one of *bona fides* by the mortgagee, otherwise against such parties it becomes absolutely null and void. It would, however, still be good against the debtor or mortgagor as evidence of debt and a lien on the goods for the amounts.

The time within which they require to be registered in the various Provinces and the fee charged are given in the foot-note to this page, which see.*

226. Removal of Mortgaged Goods.—Chattel mortgages only hold the property in the one county or registration district where they are filed or registered, and every chattel mortgage contains a covenant that the goods will not be removed from the county or registration district where they are situate.

If all or a portion of the goods covered by a chattel mortgage should be permanently removed to another county or registration district, a duly certified copy of the mortgage must be filed in the proper office of that county or district for chattel mortgages, in order to still be good against third parties. In case the goods are removed without consent they may be seized and sold to satisfy the mortgage on a breach of the covenant, if the mortgagee prefers it.

The time allowed for filing a copy of the mortgage varies in the different Provinces. In Ontario at present it is sixty days.

227. Maturity of Chattel Mortgages.—If a chattel mortgage having the usual covenant for payment of principal and interest is not paid at maturity, the mortgagee is free to take any one of several courses :

1. He may have it renewed ; or,

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* In Ontario they require to be registered at the office of the clerk of the County Court within 5 days after their execution, except in New Ontario, where at present a longer time is allowed—Haliburton, Algoma, Thunder Bay, Nipissing, Parry Sound, Muskoka, Rainy River and Manitoulin, 10 days ; and for incorporated companies whose head office is not in Ontario, 30 days are allowed for filing. The clerk's fee in each case is 50c.

In Manitoba, 20 days from date, Alberta, Saskatchewan, and N. W. Territories, 30 days from execution. Fee for filing, 50c.

British Columbia, 21 days, but if the goods are within a city or town in which an office of a County Court is situate, then they must be registered within 5 days. Fee, $2.00.

In Yukon Territory, 30 days. Fee, $2.00.

New Brunswick, 30 days. Fee, 25c. Nova Scotia and Prince Edward Island there is no time limit, but they only hold good against third parties after they are filed. The same in Newfoundland.

2. He may go himself upon the premises and take possession of the goods and remove them, or he may send a bailiff, and sell to recover the money due and costs;

3. He may sue the mortgagor for the amount due on the mortgage; or.

4. He may leave the goods in the hands of the mortgagor and extend all the time for payment he desires up to twenty years, and take possession any time during that time if he can find the goods.

228. Causes for Taking Possession.—The mortgagee cannot take possession of the goods until the mortgage is due, unless some covenant is broken that gives the right of possession.

If the goods are moved out of the registration district without the consent of the mortgagee; or if any portion of the goods covered by the mortgage is disposed of, or concealed; or if any of the goods are distrained for rent, or taxes, or seized under execution, it usually gives a right to take possession.

229. Renewal of Chattel Mortgages.—A chattel mortgage, being an instrument under seal and not affecting interest in lands, holds the *claim* against the debtor for twenty years. Each Province has, however, fixed by statute a shorter time in which it holds both the lien on the *property* and priority of claim over other creditors. Therefore, if the mortgage is not paid at maturity, and it is desired to extend time of payment, then to be binding against third parties, it must be renewed promptly within the time provided in each Province. For time in each Province, see footnote.*

230. Assignment of Chattel Mortgage.—A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed at the same office where the mortgage is filed, and same fee charged as for a discharge.

231. Discharge of Chattel Mortgage.—When a chattel mortgage has been paid a discharge should be filed also at the office where the mortgage is filed. The fee for filing varies in the different Provinces, from twenty-five cents to one dollar. There is a statutory form for a discharge with which it is required to conform.

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* In Ontario they hold the property for one year only from date of registration and must be renewed *within the last thirty days* before the year expires, and so on, from year to year as long as it runs.

In Manitoba, Alberta, Saskatchewan, N. W. Territories and the Yukon they hold the priority for two years from date of filing, and must be renewed within the last thirty days before the time expires.

In British Columbia they are good for five years, —no provision for renewal.

In New Brunswick they must be renewed each year, and Nova Scotia every three years within the last thirty days before the time expires.

The renewal statement is similar in all the Provinces, and must always be filed where the mortgage is recorded.

CHAPTER XIII.

MORTGAGES.

Mortgages—How to Secure Clear Title ; Priority by Registration ; Implied Covenants Sinking Fund Mortgages ; Payment at Maturity or After ; Discharge ; Transferring Mortgages ; The Personal Covenant ; Power of Sale Clause ; Prepaying before Maturity ; Foreclosure ; Equity of Redemption ; Mortgagee Selling Property not Mortgaged ; When Mortgages Outlaw.

232. A Mortgage on real estate is a deed or conveyance of the property by the debtor to the creditor to secure the payment of a certain sum of money, with a "proviso" that it shall become void upon the payment of the debt and accumulated interest. It must therefore be remembered that all the mortgagor retains is the possession and "equity of redemption."

Mortgages should be executed in duplicate under the Torrens System as well as the old. Printed forms kept by all stationers.

233. Securing Clear Title.—Before paying over the money, either on mortgage or for purchase, the following searches must be made if you would know what kind of a title you are obtaining, and the routine is much the same in all the Provinces :

1. The Abstract Index (and you should read the documents) for deeds, mortgages, assignments, agreements, dowers, trusts, settlements, leases, lis pendens, mechanics' liens, by-laws, plans, cautions (within three years).

2. The General Register, for wills, probates, letters of administration, assignment for benefit of creditors, power of attorney, etc.

3. The Sheriff's office, for executions, attachments, sheriff's deeds within six months, etc.

4. The Treasurer's office for taxes and tax sales within eighteen months.

5. See whether a survey is necessary to show that the land mentioned in the instrument is the land you valued and intended to take the interest in.

6. Note whether any easement of way, water, sewer, light, etc., may be held over the land, affecting it injuriously.

In the Solicitor's Abstract from the Registrar covering Nos. 1 and 2 look out for undischarged mortgages, dower, life estates and other registered claims affecting or overlapping some part of the lands.

Without such Solicitor's Abstract properly explained you may be getting a title from some one who has only a life or other small interest, though he may have lived on it for fifty years.

The Sheriff's certificate will be safe if it covers all the parties who owned the land during the previous ten years for Ontario. (See Section 220 for other Provinces.)

The Treasurer's certificate should cover both arrears of taxes and tax sales.

If the present fences and improvements have been standing longer than ten years for Ontario (Section 220 for other Provinces)), a survey may not be necessary. The Surveyor should show whether there are any water-courses, walks, roads or overhanging eaves, or other easement (privilege or right) affecting the land. Where the Land Titles Act or Torrens System is in force the certificate of title will contain all the facts under Nos 1, 2 and 3.

7. It is also well, if the interest is large especially, to secure a title by possession with proper declarations; also the terms of tenancy must be made certain if a tenant occupies the premises; also see that no mechanics' liens attach within thirty days.

Make sure that your solicitor has ascertained all the above facts before you pay over the money, because these searches are not always made.

234. Registration of Mortgages.—In all the Provinces a mortgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has priority of claim against the property unless express notice is proved.

All mortgages and other instruments to be registered must be verified by affidavit in proper form of a subscribing witness present at the time of signing.

Where lands are under Torrens System mortgages on them must be registered in order to be valid. For method of registration under this system see Section 267.

Mortgages on lands not brought under that system are registered by leaving a copy at the Registry office. Under both systems mortgages are executed in duplicate.

235. Implied Covenants in a mortgage are :

1. To pay the mortgage money and interest.
2. A good title.
3. A right to convey.
4. That on default the mortgagee shall have quiet possession.
5. Free from all encumbrance.
6. That the mortgagor shall execute such further assurance of the lands as may be requisite.

7. That the mortgagor has done nothing to encumber the lands.

There are no other covenants *implied* in a mortgage, but any others may be expressed that are agreed upon.

236. The Personal Covenant.—It must not be forgotten that nearly every mortgage contains a Personal Covenant by the debtor to pay the creditor the sum named in the mortgage similar to this :

> "The said mortgagor covenants with the said mortgagee that the mortgagor will pay the mortgage money and interest."

The mortgage is simply a lien on the property as security for the payment of the stipulated sum. Therefore, if the debtor after giving the mortgage should sell the property it is not enough that the purchaser assume the mortgage, because the personal covenant still binds the original debtor. The mortgage should either be discharged, or a release under seal obtained from the creditor or mortgagee. In Ontario, on mortgages given since 1894 the personal covenant expires with the mortgage (in ten years after maturity or last payment).

237. Sinking Fund Mortgages are those in which the principal and interest together are divided into a number of equal yearly, or half-yearly, or quarterly or monthly payments. This form is not used much in Canada since the recent legislation made it compulsory to state in the Repayment Clause the four following particulars : (1) The amount of the loan. (2) The rate of interest per annum. (3) The part of each payment that is for interest. (4) And the part of each payment that is for principal.

The Building Societies are about the only institutions using this old "sinking fund" form of mortgage.

238. Payment of Mortgage.—When a mortgage falls due it may be paid without any notice to the mortgagee.

If it is overdue, and the mortgagee *demands* payment for the whole amount, or even part, it may be paid in full if the mortgagor wishes to do so. But if only part is demanded, and only that much paid, together with the interest due, then in that case the mortgagor cannot subsequently, except by consent, pay the balance without giving the required number of months' notice, or advance interest in lieu of notice.

239. Discharge of Mortgage.—When a mortgage has been paid, the mortgagee is required to execute a Discharge, which is the statutory form of receipt, but at the cost of the Mortgagor.

If the mortgage has been assigned, the assignment should be as accurately described in the discharge as the mortgage itself.

A discharge operates as a re-conveyance of the land to the

mortgagor or his legal representatives, and should be registered immediately in the same office where the mortgage is registered.

When a mortgage has been paid in full the mortgagee is compelled by law to hand back the mortgage, and return all title deeds and other papers he may hold in connection with the property that belong to the mortgagor.

240. Transfer of Mortgages.—Mortgages are not negotiable by indorsement, but may be transferred by assignment. The assignment is also an instrument under seal, and must be recorded at the same place as the mortgage is registered.

If a mortgage is assigned the assignee takes it subject to all the equities that bound the original holder.

241. Prepayment of Mortgages.—If a mortgage has not yet become due, generally speaking, the mortgagee cannot be compelled to accept payment, unless there is a clause in the mortgage binding the mortgagee to accept payment sooner. There are, however, some exceptions, as the following:

By a Dominion statute it is provided that when a mortgage is drawn for a longer time than five years, the mortgagor may redeem the mortgage, after the expiration of five years, by paying the amount due for principal and interest, together with three months' advance interest in lieu of notice. If the mortgagee refuses to take the money for the principal and interest that is thus tendered to him, no further interest can be collected.

242. Interest on Mortgages.—Mortgages on real estate may draw any interest that the mortgagor covenants to pay; but in Canada, if the rate is not named, it will be five per cent.; Newfoundland, six. If the interest is not paid when due, the mortgagee has power either to take possession, or foreclose and sell. The mortgagee may also sue for the interest due, and in most of the Provinces may distrain for arrears of interest, subject to the statutory exemptions from distress in each Province.

243. Power of Sale.—Every mortgage contains a clause similar to the following:

> "Provided that the mortgagee on default of payment for four months may, on three months' notice, enter on and lease or sell the said lands," etc.

This clause empowers the mortgagee, after complying in all respects with the terms of notice, to take possession of and sell the mortgaged lands. The time mentioned in this paragraph may be changed, and whatever number of months may be stated in the mortgage will hold.

In case the mortgagee demands payment of the whole mortgage

debt, because a payment of either principal or interest is in arrears, the mortgagor may either pay off the mortgage according to the notice, or he may pay the arrears of principal or interest, as the case may be, with interest on the arrears since due, together with the cost of notice, and the mortgage will remain as before. But the payment must be made promptly before action further than the notice is taken.

244. Mortgagee Taking Possession.—A mortgagee may take possession of the property at any time after the mortgage falls due, or if interest is past due, and may collect the rents and apply them on the mortgage.

A mortgagee who simply takes possession of the property without foreclosure, or a sale, is not the absolute owner of the property—in reality only a "trustee"—as the mortgagor in that event still retains his equity of redemption, and may any time within twenty years redeem the property, by procuring an order from the court—that is, enter an action to recover possession of the property.

To become the absolute owner of the property without the expense of foreclosure or a sale, the mortgagee must obtain from the mortgagor a release of his equity of redemption, either by purchase or otherwise, or let it rest until it is barred by statute.

245. The Object of Foreclosure is to take away the mortgagor's equity of redemption, and also to bar claims of subsequent mortgagees without a sale of the property.

Payment of the arrears and costs by either the mortgagor or a subsequent mortgagee will prevent a foreclosure. They may also force a sale of the property, instead of the foreclosure, by filing in the office from which the writ of foreclosure was issued a memorandum, stating as follows: "I desire a sale of the property, instead of foreclosure," and at the same time deposit $80 for costs.

246. Period for Redemption.—When an order for foreclosure has been obtained the mortgagor and subsequent mortgagees have six months in which to redeem before final foreclosure.

It is possible to have a final order of foreclosure set aside, but there must be substantial grounds for it.

247. Unsatisfied Mortgages.—If a mortgage for a certain amount covers certain properties of a debtor which, upon being sold, do not pay the whole claim of principal, interest and expenses, and the debtor has other property, the mortgagee can come on that other property until his full claim has been satisfied. To do so he would sue on the covenants, and thus securing judgment against the debtor personally, issue an execution which would bind all the property of the mortgagor that was not exempt from seizure under execution or landlord's warrant.

243. Outlawing Mortgages.—Mortgages on real estate outlaw in Ontario and Manitoba in ten years after maturity or last payment of either principal or interest, unless re-acknowledged in writing; British Columbia, Nova Scotia, Prince Edward Island, and New Brunswick, twenty years; Alberta, Saskatchewan, Yukon, North-West Territories and England, twelve years; Newfoundland twenty years; Quebec, thirty years, provided the mortgage is duly registered.

CHAPTER XIV

PROPERTY.

Property—Definition of; Personal and Real; Joint Owner; Life Owner; Ownership by Possession.
Sale of Real Estate—Binding Agreement; Fraudulent Sale of Land.
Deeds—Warranty; Quit Claim; Poll Deed; Deed of Gift; Tax Sale Deed; Purchaser may restrict nature of title.
Writing Deeds—How to write them; Who should sign; Registration.
Torrens System of Lands Transfer—Where in Force; How to Register; How many copies of Deed, Mortgage and Lease are required.
Sale of Personal Property—When Valid; Actual or Constructive Delivery; Bill of Sale; when Verbal Agreement Binds; Barter.
Property Sold Must Exist—Potential Existence; Sales on Trial; Selling under Guarantee; Sales by Samples; Selling Stolen Goods; Auction Sales; Sale of Book Accounts; Goods Stopped in Transit.
Conditional Sales—Registration of; Retaking Possession; Time to Redeem; Notice of Sale; Leaving Copy of Lien Agreement.

249. Property.—The legal definition of property is "The right and interest which a man has in lands and chattels to the exclusion of others." A man purchases so many acres of land and thus acquires the possession and exclusive right to its use. The soil itself is not his, but he has acquired the right to its possession and use—a right that excludes all others from its use.

In the common language of the people property means the thing itself. Thus, a man buys a bay horse; he calls it his property, but in legal language it would be his "property in the bay horse." That is, the right and title to its possession and use.

250. Division of Property.—Property is divided into Personal and Real, the latter usually called Real Estate. In Quebec they are styled Movables and Immovables.

1. Personal property includes all classes of property except lands and buildings. It consists of such things as are movable from place to place with the owner, as money, mortgages, stocks, letters patent,

carriages, machinery, farm implements, live stock, book accounts, annual crops, nursery stock, good-will and lease of property for a term of years.

2. Real property includes lands, buildings, trees growing upon the soil, and every natural source of wealth such as coal, gas, oil, and minerals that may be buried in the soil.

251. Joint Ownership.—Joint owners of real property, called also "joint tenants," is where two or more persons own property jointly; all have an equal right to it at the same time. It may be a joint tenancy for life, or in *fee simple*, according to the wording of the Deed.

The principal use in practice of joint tenancy is to vest estates in *trustees*. Sometimes husband and wife have property deeded to them as joint tenants in *fee simple*. In such cases if neither one disposes of his or her share during life, it cannot be disposed of by will at death, but on the decease of one, the survivor takes the whole estate.

But in the class of ownership called "tenants in common" either one may sell his share during life, or will it at death; or, if dying intestate, his share will devolve to his heirs, and not to the surviving tenants. Syndicates buying real property for speculative purposes use this form of joint ownership.

252. Life Ownership is where a person has the use of property during his natural life. It may be acquired by gift or will. He cannot decrease its value by removing buildings, etc., or make any disposition of it at his death.

He may use and enjoy it for himself, or rent it to others and enjoy the proceeds, or he could sell or mortgage the use of it during his lifetime.

253. Ownership by Possession.—In all the Provinces a "squatter," or any person (except where property is held in trust) who has peaceable, uninterrupted possession of land, treating it as his own, paying taxes and not in any way acknowledging the right of any other person for a definite number of years, obtains a good title to the same and can subsequently transfer it and give a clear title. (For length of time, see Section 220.)

Peaceable possession does not mean that there has not been any disputes about the ownership, but rather that no action has been taken to dispossess the intruder.

254. Sale of Real Estate.—There are two kinds of sales, viz., Executed and Executory.

1. Executed Sales are those where the sale has been completed by payment, and the execution and delivery of the deed of conveyance.

2. Executory Sales are those where possession has been passed

by *agreement* for sale, but the title not to pass until the stipulated amount has been paid.

255. Agreement to Sell or Buy Real Estate, unless in writing signed by the contracting parties or their duly authorized agents, is not binding. An oral contract made, even if money be paid on it, to " bind the bargain," does not bind either party.

An ordinary agreement signed by each party without seal is sufficient.

256. Fraudulent Sale of Real Estate.—Any person who knows of the existence of an unregistered prior sale, mortgage or other encumbrance upon any real property who fraudulently makes any subsequent sale of the same is liable to one year's imprisonment and a fine not exceeding $2,000.

257. Warranty Deed with full covenants is one that guarantees a perfect title and quiet enjoyment of property to the purchaser and his heirs and assigns after him.

258. Quit Claim Deed is made by a person who does not hold a perfect title to a property in favour of some one to whom he wishes to give his claim, usually one who has a claim to the property already. It is much like an ordinary deed without the covenants. It conveys only the party's interest in the property without any guarantee of titles. It would be used when a mortgagee purchases the land already mortgaged to him, the covenants being already made in his favor in the mortgage. It would also be used when heirs in common of an estate quit their claim to one another and to executors.

259. Deed-Poll is a deed made by one person, as in case of a Sheriff's Deed.

260. Trust Deed is one made to a person called a trustee, conveying property to him to be held in trust for some other person. The Statute of Limitations does not apply in such cases. He is empowered by the conveyance to carry out its provisions, whatever they may be, as to collection of rents, sale of property, etc., and for investment of the funds.

261. Tax Sale Deeds.—All the Provinces allow the sale of lands for taxes. In Ontario after three years in arrears for taxes the land may be sold, and a title to property derived from a tax sale extinguishes all other titles, heirs included, if the sale was legal and the proceedings according to statute.

262. A Deed of Gift of property from father to son, etc., is usually drawn in the parts that relate to the consideration, " Witnesseth that in consideration of the natural love and affection, and

the sum of one dollar," thus giving both a *good* and a *valuable* consideration.

263. Purchaser Restricting Nature of Title.—In purchasing land a man should decide when having the deed made how he wants to hold it, either :

1. In his own name, his wife holding her dower in the ordinary way, in those Provinces allowing dower ;
2. In his own name, his wife having no dower in it ;
3. In his wife's name, he having no interest ;
4. In the names of man and wife jointly, so that when one of them dies the other owns it all without the formality of a will or any other process.

264. Writing Deeds.—The Christian names of the various parties must be given in full. The Deed should be written in duplicate, one for registration and one retained by the purchaser. There need also be a witness, who makes an affidavit that he saw the instrument signed. The printed forms are practically the same for all the Provinces.

An agreement or deed may be signed and sealed, but it has no binding effect on the maker until it is delivered into the hands of the parties in whose favor it is drawn.

Where there is any contradiction between different parts of a Deed or other document, the part that is in writing holds against the part that is printed, and in mortgages what is written first holds over the last, but in wills the last written holds over the first.

When land is conveyed to a corporation it is made to " their successors " instead of their " heirs," and to their " successors in office " where a conveyance is made to trustees. Corporation deeds do not need the affidavit of the witness, as the affixing of the corporate seal of the corporation or company is sufficient evidence of genuineness when signed by their chief officers.

265. Who Should Sign.—Any person who has anything yet to do should sign the deed. If the purchaser paid the whole purchase price, hence having nothing further to do, he would not sign. If, however, there was a mortgage or claim that he had covenanted to pay off or to allow a portion of the property to be used as a lane, etc., then he would be required to sign so as to bind himself.

For land in which a wife would have no dower she would not be required to sign a deed or mortgage.

266. Registration.—All instruments respecting titles of real estate should be registered in the Registry Office of the County or

Registration District in which the property is situate as soon as possible after their execution, as all documents take precedence according to priority of registration.

Also, if a deed or mortgage should be lost or destroyed a duly certified duplicate can be had at any time from the Registrar for a small fee. For twenty-five cents the title of any property may be examined and copies taken from documents respecting it.

The fees for registration vary according to the number of words in the deed.

All deeds and documents to be registered must be verified by affidavit in proper form of a subscribing witness present at the time of signature.

267. Torrens System of Land Transfer has come to us from Australia. A similar system has been in force in England for centuries under the name of Copyhold. It is now in force in Manitoba, Alberta, Saskatchewan, Yukon, North-West Territories, British Columbia and portions of Ontario. It is referred to as the "Land Titles Act."

(1) Lands granted by the Crown since the introduction of this system are subject to this Act, and the old cumbersome system of conveyancing cannot be used, but all dealings with such lands must be recorded on the "Certificate of Title." All other lands may be brought under the Act on the application of the persons interested and payment of a small fee.

The application, with the deeds, is left at the Land Titles Office, where the necessary blanks and all information may be obtained. The title is there fully investigated, and if found secure against ejectment or against the claims of any other person, the proprietor will receive a "certificate of title," which operates as a government guarantee that the title is perfect and there is no going behind it. If a certificate of title should be issued to the wrong person the government is liable for the damages to the injured party. The certificates are issued in duplicate, one being given to the proprietor and the other retained in the Land Titles Office. Crown grants of land bought since the act came into force are also issued in duplicate. The one retained in the office constitutes the Register Book. Therefore, if a proprietor wishes to mortgage, lease, or in any wise encumber his land he executes a memorandum of such mortgage in duplicate or lease in triplicate, which he presents at the Land Titles Office with the "certificate of title." The proper officer makes a record of the transaction on the certificate of title, and also on the duplicate certificate which is in the office. This constitutes the registration of the instrument.

(2) When a mortgage is paid under this system a receipt is indorsed on the duplicate mortgage held by the mortgagee, which is then brought to the Land Titles Office, and the fact of the payment of the mortgage is noted on the certificate of title.

(3) When a lease is surrendered it has "surrendered" indorsed on it, *signed* by the lessee and *accepted* by the lessor, and being properly attested is brought to the office where the proper officer records the fact of its surrender on the Certificate of Title.

(4) Both mortgages and leases under this system may be transferred by indorsement, written upon the copy of the instrument held by the proprietor, and then registered.

(5) All instruments for registration must be free from erasures, properly witnessed, and proved. For deeds or transfer in fee one instrument is sufficient, while mortgages require two copies and leases three.

(6) In this system it must not be forgotten that it is not the execution of an instrument that transfers the title, but its registration in the Land Titles Office. Under the old system it is the execution and delivery of the instrument that transfers the title.

268. Sale of Personal Property.—In the sale of personal property there are five elements necessary to its validity:

1. The parties themselves must be competent to contract. (The same as in all other contracts.)

2. The seller must have a valid title to the property to be sold.

3. The property must be something legal to be handled, and

4. The sale must be without fraud.

5. The price is either paid in money or promised to be so paid, for if it were in goods or service it would be a barter and not a sale.

Selling personal property, which is still retained in possession, is binding as between the parties themselves, but is not binding against creditors or subsequent purchasers unless a Bill of Sale is registered.

269. Actual or Constructive Delivery.—In sales that have been completed there is usually a delivery of the property and a continued change of possession, but not necessarily so. Goods yet in charge of a railway or in a warehouse may be delivered by simply handing over the bill of lading or warehouse receipt. This is called a "constructive delivery."

When the contract for the sale of specific articles or goods is completed the right to the property is immediately vested in the buyer as also the risk and the right to the price in the seller, unless the contract specially provides otherwise.

If the buyer assumes the risk of the delivery or leaves the goods in possession of the seller, and they are destroyed before delivery, it will be the loss of the buyer ; but if the seller assumes the risk of delivery then the loss will be his.

270. Bill of Sale.—If the goods are not delivered at time of sale, but still left in the possession of the former owner, a Bill of Sale must be filed in the office where Chattel Mortgages for that district are filed, in order to make such a sale binding against judgment creditors, and subsequent purchasers and mortgagees for value. It will be noticed here that a Bill of Sale differs from a Chattel Mortgage in that it is an absolute sale of the goods, and not merely a lien on them as security for payment of a debt.

271. When a Verbal Agreement Binds.—In all the Provinces the sale of personal property by verbal or oral agreement is binding up to a certain sum, but beyond that amount it does not bind either seller or buyer, no matter how many witnesses there might be to the bargain.

In Ontario, New Brunswick and Nova Scotia a verbal agreement for any amount *under* $40 will bind ; but if the amount is $40, or more, it is utterly worthless.

In Manitoba, Alberta, Saskatchewan, Yukon, North-West Territories, British Columbia, Quebec, England and Newfoundland any amount under $50.

In Prince Edward Island, $30.

In each of the Provinces if the amount is not *under* the figures here named, then, in order to be binding, the contract must either be in writing, or a part or the whole of the goods delivered, or a part payment made.

But up to the amounts here named for the respective Provinces a bargain made " by word of mouth " for the sale of personal property is as binding as though it were in writing.

Retail merchants and other traders giving verbal orders to commercial travellers or others for a smaller sum than those, respectively, named above for the different Provinces cannot cancel their order, except by permission of the wholesale house or the manufacturing firm, and if the goods are not received when shipped in accordance with the order the shippers have an action for damages, which would naturally be the price of the goods. But if the amount is over the sums named here for each Province the order may be cancelled any time before the goods have been actually shipped.

272. Barter is where one article is given in exchange for another or for service, and if there is no warranty given as to the soundness or quality the property in each passes with the delivery of the article

and the exchange is complete. Neither party can forcibly or otherwise take the article back he bartered away, except by consent of the other, without becoming liable to an action for theft and also for damages.

273. The Property Sold must Exist.—Jones sells Smith a certain horse at a certain price, but after the sale is concluded it is discovered that the horse is dead, both parties having been ignorant of the fact. There is no sale, even though the money had been paid.

274. Property may have a Potential Existence.—The natural products of the soil, the increase of live stock or other property may be sold in advance. For instance: A farmer may sell his apple, peach or pear crop before the buds even begin to show; or the wool clipped from his sheep the following spring, etc. They are not yet in existence, but they are possible; hence they may be sold.

275. Sales on Trial.—When articles are purchased on trial at a certain price they must be rejected before the time expires if they do not suit, or the sale is complete, and the party bound to keep them.

276. Selling under Guarantee.—The descriptions of machinery as to manner and excellence of work, or the quality of other goods, that appear in newspaper advertisements and circulars cannot be made a binding guarantee to protect the purchaser. To have an effective guarantee it must either be in a definite form of a guarantee, or in a written or type-written letter. The courts allow for a good deal of what may be called exaggeration in mere advertisements; hence, as an instrument or machine may always be tested before being paid for, there is not much chance afterwards to recover damages for misrepresentation, except on a written guarantee.

277. Sales by Example or Description are made on the warranty, either implied or expressed, that the goods when delivered will correspond in kind and quality with the description given or sample shown, and if such is not the case, there is no binding sale, and the article should not be used, but promptly returned, or the firm, at least, promptly notified of its non-acceptance. If the seller agreed to remove the article if unsatisfactory, the notice should be given as per agreement, and the article cared for until removed. If a cumbersome machine were left an unreasonable time, it must still be cared for, but storage could be charged and collected before delivering the property.

278. Selling Stolen Goods does not give them a good title in the hands of an innocent purchaser for value, as it does in the case with promissory notes. They can be retaken wherever found.

Receiving stolen goods, knowing them to be stolen, is an indictable offence. Punishment, fourteen years' imprisonment.

279. Auction Sales.—The auctioneer is the agent for both the seller and the buyer; hence, binds both by his acts. When he is selling he is acting as agent for the seller, but in the act of "knocking down" the article to a certain bidder he is agent of the purchaser, and in the memorandum of the sale he makes in his book he acts for both parties, and binds both. Auctioneers' licenses are granted by counties and cities, and no other person may sell by public auction.

A merchant could not sell his own goods by public auction without a license.

Sheriffs and bailiffs who sell goods under distress for rent or under execution need no license.

280. Sale of Book Accounts is affected by assignment. The following brief instrument is sufficient:

> *For value received, I hereby sell, assign, and transfer to (person's name) the accompanying accounts and claims against the persons whose names are enumerated (enumerate the names and amounts).*
>
> (*Signed*) J. WINTERS.

Every form of account or debt due to a person may be sold or transferred by assignment as readily and validly as negotiable paper may be by delivery and indorsement.

The above form, or one similar to it, will answer for all accounts; but for mortgages see Section 240.

281. Goods Stopped in Transit.—Goods not yet paid for, having been shipped to the purchaser, but before delivery word being received of the purchaser's insolvency, may be stopped, by ordering the company in whose possession they are, not to deliver them, providing the bill of lading has not been delivered.

If it should turn out, however, that the purchaser is not insolvent, then the seller who unlawfully stops the goods in transit may be required to indemnify the purchaser's loss, or to deliver the goods and pay damages sustained by the delay in delivery.

282. Conditional Sales are what have been referred to under the head of "Lien Note." In selling sewing machines, organs, pianos, etc., it is common to sell them on the "instalment plan," the buyer obtaining the *possession and use* of the article, but the seller retaining the *ownership* until it is paid for. These conditional sales are binding and enforceable by common law, and all the Provinces recognize them; but each Province (not Newfoundland), has enacted

special legislation to protect the seller and the interests of innocent third parties in certain cases as given in following sections:

It will be noticed that in chattel mortgages the ownership changes, but not the possession, while in conditional sales the possession changes, but not the ownership.

Landlords may seize and sell such property for rent, but they must pay the balance of purchase money. It is the same with execution creditors.

Again, if an article, say, a wagon, covered by such lien were taken to a shop for repairs, the mechanic would have a preference lien on such wagon while it remained in his possession for the amount of his bill, and could hold it until paid or sell it by auction. (See Section 409.) Storage warehouses would also hold it for the charges

283. Registration of Conditional Sales.—To make these conditional sales binding against subsequent purchasers, or mortgagees without notice, in good faith for valuable consideration, all the Provinces, except Quebec, require a copy of the agreement to be filed in the proper office the same as for a chattel mortgage.

Ontario and Prince Edward Island at present make an exception respecting manufactured articles and allow either registration, same as the other Provinces, or merely that at the time possession is given to the purchaser, the name of the vendor should be painted, engraved or otherwise attached to the article. In Ontario it must be filed at the Office of the County Court Clerk within ten days, the fee being only 10 cents.

284. Retaking Possession.—Articles thus sold and the note not being paid at maturity, the seller may retake them, or he may sue on the note, and if he fails to recover he may then retake the articles. It is not necessary to procure the help of an officer, but care must be taken not to commit a breach of the peace. If the conditional purchaser resists, force must not be used, but the article must then be taken by an "action of replevin," if it cannot be obtained peaceably any other way. It would not be theft to take it without permission.

In Quebec, should the conditional purchaser or lessee refuse to allow the legal owner to retake possession, he can take possession under a writ of *Revendication.*

285. Time to Redeem.—In nearly all the Provinces if the goods are retaken by the seller they must be retained twenty days before they can be sold to others, unless the agreement provides otherwise; and any time during those twenty days the purchaser may redeem them by paying arrears, interest and costs incurred.

286. Notice of Sale.—When goods are retaken for a breach of the condition they cannot be resold without notice to the debtor, which in most of the Provinces is fixed by Statute five clear days before the sale, as follows:

287. Form of Notice.—

To [person's name], of [place]:

Sir,—Please take notice that at the expiration of five days from the service of this notice upon you, *to wit*, upon the . . . . day of . . . . 19 . . I shall proceed to sell the following goods or chattel [describe the property] at the . . . . in the . . . of . . . . in the county of . . . . province of . . . . The said goods were taken possession of by me on account of breach of condition in the conditional sale or promise of sale thereof to you by me. If you desire to redeem the said goods or chattel you may do so at any time within the twenty days required by Statute after the . . . . day of . . . . [the day of taking possession] on payment of the sum of $ . . . ., being the amount in arrear on such conditional sale, together with the interest, costs and actual expenses incurred in taking possession.

Dated this . . . . day of . . . . 19 . .

(Signed) . . . . . .

It is not compulsory that the sale should take place, but simply that it must not take place without the notice being sent.

288. Third Parties Asking Information.—In Ontario and most of the other Provinces any prospective purchaser of an article thus covered by a lien may demand and is entitled to receive, within five days thereafter, from the manufacturer or vendor claiming ownership full information concerning the amount yet due and the terms of payment. A refusal or neglect to furnish such information incurs a penalty not exceeding $50 upon conviction before a Stipendiary or Police Magistrate or two Justices of the Peace. The inquiry may be by letter, giving name and post-office address, and a reply within five days by registered letter to such address would be sufficient.

289. Copy of Lien with Vendee.—The Act in some of the Provinces requires that a copy of the lien note or agreement be left with the purchaser.

In Ontario, New Brunswick, Nova Scotia and P. E. Island it must be left at the time or within twenty days thereafter, and British Columbia, twenty-one days.

Feb. 1.

CHAPTER XV.

LANDLORD AND TENANT.

Landlord and Tenant—Relation Between ; Lessor ; Lessee.

The Lease—Terms of ; Oral ; Written ; Under Seal ; Registration of ; By Minors ; Idiots ; Lunatics.

Rent—When Payable ; Joint Tenants ; Farm on Shares.

Mortgage *vs.* Lease—Tenant and Taxes ; The Landlord's Covenant ; Repairs ; Frozen Water Pipes ; Tenant Damaging Premises ; Tenant's Fixtures ; Tenant Moving Out ; New Tenancy by Implication ; Landlord *vs.* Other Creditors' Rights ; Landlord Raising the Rent ; Landlords' Notice to Vacate ; Form of Tenant's Notice to Quit ; Notice to Quit not Acted Upon ; Overholding Tenant ; Notice Claiming Double Rent ; Distraining for Rent ; Tenant's Set-off ; Penalty for Illegal Seizure ; Exemptions from Seizure ; Moving out with Exemptions ; Boarders' and Lodgers' Goods ; Seizing the Exempted Goods.

290. The relation subsisting between landlord and tenant is that which subsists between the owner of houses and lands and the person to whom he grants the use of them for a specified time, for a stipulated consideration called *rent*. The landlord is called the *lessor*, and the tenant the *lessee*. The same class of persons who can contract in regard to notes and bills can contract as regards landlord and tenant ; that is, those of the full age of twenty-one years, and of sound mind.

291. Lease is the name given to the contract between landlord and tenant. It may be either oral, or written, or under seal. Oral, verbal, and parole all mean the same thing, viz., by word of mouth. In this chapter, *verbal* and *oral* will be the terms employed, as they are in common use.

It must be remembered that the lease is the *agreement*, and not the paper on which it is written. A lease may be either written or only verbal. If written, it should be under seal—that is, by Deed. Where a seal is not attached the writing is only an agreement for the term specified, the same as an oral or verbal lease.

The lease should state all the conditions and agreements, for oral promises do not avail much in law where there is a written instrument.

292. Term of Lease.—The usual terms of lease are : (1) Week ; (2) month ; (3) quarter ; (4) year ; (5) term of years ; (6) at will ; (7) for life.

1. In all the Provinces an oral lease for one year and under is valid; but an *agreement* to lease, even for less than a year, is not binding unless put in writing.

2. Oral leases for a term not exceeding three years from the making thereof, when completed by entry and payment of rent, are valid.

But an oral lease or a writing not under seal, to lease premises for over three years, or for three years from a *future* time, thus making the tenancy last for more than three years from the date of making, is void against third parties.

Also, an oral lease, or a lease in writing not under seal for over one year, but not exceeding three years, where the tenant has not entered upon the premises, will not support an action to compel the tenant to enter or to pay rent, nor the landlord to give possession still it may be ground upon which an action for damages could be maintained for breach of agreement.

In Quebec leases for over one year must be registered.

3. A lease for a term exceeding three years and up to seven must be in writing and under seal, otherwise in Ontario and New Brunswick it would be held a "tenancy at will" only. In British Columbia, Nova Scotia, Alberta, Saskatchewan, Yukon and North-West Territories they must be registered as well as under seal.

4. A lease for over seven years must be in writing, under seal, and recorded. If not registered, a person buying the property without notice of this lease, could, by giving six months' legal notice, eject the tenant.

293. Rent—When Payable.—Rent may be payable in any way agreed upon, either in advance or at the end of the term. It might be a monthly tenancy, and yet the rent payable weekly; or a yearly tenancy, with the rent payable monthly or quarterly. Whatever the agreement may be for payment, the tenant has the whole of the day on which the rent falls due in which to pay it, and no expense can be incurred until the day after the rent is due.

294. Lease by Minors, Idiots, Lunatics, etc.—A lease by or to a minor is not void, but voidable on their part. They can contract for necessary lodgings, according to their station in life, and are liable for same.

Idiots and lunatics may also make leases that are necessary, but cannot be made to take a house that is unnecessary, if the landlord was aware of their condition and took advantage of it.

295. "Joint Tenants" is simply another name for joint owners of a building or other property. And "tenants in common" means owners in common, and are in some respect similar to a partnership. To lease their joint property requires the consent of both,

but either one may, without concurrence of the other, give a legal notice to vacate, may also distrain for his share of overdue rent, or may demand a higher rent, or require it to be paid weekly, or monthly, or in advance; of course, in each case, being required to give a legal notice.

296. Farm on Shares.—A person working a farm on shares, and having the exclusive possession, becomes a tenant, and subject to the laws of Landlord and Tenant. But if he were to work it on shares, and each party furnishing a part of the seed and dividing the profits, both parties thereby being equally in "possession," there is no *lease*, and the owner in case the laborer or tenant has agreed to pay a certain amount in money could not distrain for it.

297. Mortgage vs. Lease.—If a valid lease is given prior to a mortgage, the mortgage will not affect the tenant's rights; but if a lease is given after a mortgage is placed on the property, and the mortgage falls due, and is not paid, the mortgagee can dispossess the tenant, and even take the growing crops. Of course, the tenant would have a cause of action against the landlord, but a landlord who had lost the property under a mortgage would not be likely to be in a financial position that the tenant could recover any money from him by way of damages.

298. Tenant and Taxes.—In all ordinary written leases the landlord must pay the taxes, unless an express provision is made to the contrary.

If the tenant is not assessed, his goods cannot be seized for taxes. But if a tenant is assessed, and his name on the collector's roll, his goods are liable, and may be seized, although the agreement may be that the landlord is to pay the taxes; in which case, he should pay the taxes before seizure, and then he may legally deduct the amount from the rent.

299. The Landlord's Covenant.—The only covenant the landlord makes is to give the tenant "quiet enjoyment." If evicted by another person, who has a prior or better claim to the property, the tenant may recover from the landlord any damages that he may sustain.

300. Repairs.—The relationship between landlord and tenant does not bind either one to make repairs. It is entirely a matter of *agreement*. If the landlord has not agreed to make repairs he cannot be compelled to do so during the term of the lease. The tenant cannot make the repairs, no matter how much they are needed, and deduct the cost from the rent; and if he moves out in consequence of the bad condition of the premises he must still pay rent until his lease expires, even though the premises are in an unsanitary

condition. It must be remembered that everything depends upon the agreement. If there is nothing in the lease (or bargain) binding either party to make repairs, then neither party can compel the other to make them.

301. Frozen Water Pipes.—If the lease provides that the tenant shall make all repairs, then in that case he would be liable for the repairs to frozen water pipes. But if there is no written agreement or lease, then the question of liability for such repairs will depend entirely upon which party was "responsible for the damage" occurring.

302. Tenant Damaging Premises.—There is an implied covenant in all leases, verbal or written, that the tenant will take reasonable care of the premises, and make all breakages good, and deliver the property up at the expiration of lease in as good condition, save "ordinary wear and tear," as when he took it. Therefore if the tenant damages the property the landlord may sue and obtain judgment. He has no lien, however, on the tenant's goods for the damage, but can only recover it by suit.

303. Tenant's Fixtures.—The Ontario Statute reads: "The lessee may, on or prior to the expiration of the term, remove and carry away all fixtures, fittings, machinery or other articles upon the premises, which are in the nature of trade or tenant's fixtures, or which were brought upon the premises by the lessee. But he shall make good any damages to the premises by such removal." The same would apply in all the Provinces.

They must be something of a personal character. Anything that is affixed to the freehold so that it cannot be separated without doing serious damage to the freehold becomes a part of it.

Anything that is sunk into the ground, as a well, trees, buildings of stone or brick are the same as the soil itself, and therefore, a part of the freehold. But buildings placed on stone boulders, or posts, or plate, are fixtures, and may be removed without injury to the soil.

The machinery of a manufactory is also a fixture, and can be removed. Temporary partitions, counters, shelving, etc., placed in the building by the tenant, would be tenant's fixtures, and could be removed, but doors and windows, likewise permanent partitions could not be removed as they become a part of the building proper.

A tenant claiming anything as a fixture must remove the article promptly or make it known that he claims it, otherwise he waives his right to it.

304. Tenant Moving Out. A tenant can move out of premises any time he desires to do so before the tenancy expires if there is no rent due and the landlord cannot stop the goods. But

if there is any rent due the landlord can prevent the removal of the goods (except the exemptions) until the arrears of rent are paid.

But a tenant moving out before the expiration of his lease is still liable for the stipulated rent until the lease expires, unless the landlord accepts the premises, thus releasing him.

If there is nothing in the lease forbidding the tenant to sub-let, he may rent the premises to another tenant, and the landlord will be compelled to either accept the new tenant or to receive the premises and release the old tenant. Of course, if the tenant sub-lets the premises without getting a release from the landlord, he will still be liable to the landlord for the rent if his sub-tenant should fail to pay it. Feb. 7.

305. New Tenancy by Implication.—Where a tenancy for one or more years expires by lapse of time or by notice, and the tenant remains in possession, paying the same rent without any new agreement being made, it becomes "a yearly tenancy" by implication of law, and the presumption is that the terms of the former lease will hold good. Any time afterwards that either party wishes to terminate it the regular six months' notice would be required. The same would be true for a quarterly, monthly, or weekly tenancy.

A tenancy by implication is ordinarily implied by the payment and acceptance of rent, and such implication can only be prevented by one or the other of the parties interested giving satisfactory proof that it was paid or received by mistake, or upon some other condition or agreement.

306. Landlord vs. Other Creditors' Rights.—Where there are other creditors, the landlord can only recover, prior to them, for one year's rent if that much is due. After that he must take his share ratably with the rest.

307. Goods Seized Under Execution or under a chattel mortgage, and in the custody of a sheriff or bailiff cannot be distrained; but such goods cannot be sold or removed by said officer without the landlord's preference claim of one year's rent being provided for, or so much of arrears of rent for a less period as is due up to the time of seizure.

The landlord must give such officer a written statement of the terms of the lease and the amount in arrears. If the goods were sold and paid into court before the landlord had notice of the seizure, such written statement would be given to the clerk of the court instead of to the bailiff.

308. Increasing the Rent.—The amount of rent to be paid must always be a matter of agreement. The landlord cannot raise the rent merely by giving the tenant a written notice that at such a

time the rent will be increased; such notice amounts to nothing. The landlord cannot raise the rent or change the agreement in any other way without the assent of the tenant, any more than the tenant can lower the rent without the landlord's consent.

The only way a landlord can legally increase the rent while a tenant is in possession and who will not agree to an advance, is to terminate the tenancy, hence:

1. The notice must be to vacate, that is, order the tenant out, thus ending the tenancy. Then, after that is done, he may give the notice for an advance in rent, or the two notices may be given at the same time.

The two notices could also be joined in one by adding at the end of the notice to vacate a clause like the following: "And I hereby further give you notice that should you retain possession of the premises after the day herein mentioned the annual (or monthly) rental of the premises now held by you from me will be $ . . . . , payable (state how)."

2. If the tenant then remains in possession after his lease expires he thereby tacitly agrees to pay the higher rent and will be bound to do so.

3. Also where a lease has expired and the tenant remains in possession without a new agreement, thus becoming a "tenant at will," the landlord may before receiving any rent, give notice of raising the rent, and the tenant in that case must either accept the terms and pay higher rent or move out.

to end

309. Notice to Quit.—

1. Where property is leased for a definite time, the lease expires at that date, and neither party need give the other notice to terminate it or to vacate. The tenant may then go out, or the landlord may lease the property to another party. But where this first period has been passed and the tenant still remains in possession and pays rent another tenancy is created, and then, after that, when he wishes to vacate, or the landlord desires him to vacate, a legal notice must be given.

2. The notice to vacate should be clear and distinct with no conditions or provisos in it. If any conditions are desired to be stated they may be given in a separate letter which may accompany the notice, but the notice itself must not contain any conditions.

An oral notice would be legal, but it is better to be in writing, either as an ordinary letter or a formal written notice, handed to the other party or sent by mail.

3. If there is no agreement as to the kind of notice to be given to quit, then the statutory notice is required, but if there is an agreement, that, of course, will hold. If the agreement says "at any

time," or "thirty days," or "three months," etc., then the party giving such notice is released from giving the "statutory notice."

The statutory notices, except for Nova Scotia and New Brunswick, are as follows:

1. A yearly tenancy, six clear calendar months.
2. A quarterly tenancy, three clear calendar months.
3. A monthly tenancy, one clear calendar month.
4. A weekly tenancy, one clear week's notice.
5. A tenancy at will, no time.

In New Brunswick and Nova Scotia the yearly tenancy requires only three months' notice; a quarter or month, one month's notice; and a week, one week's notice.

It must be borne in mind that this notice to quit cannot be given at random, but must be given so that the "month," or "quarter," or "six months," as the case may be, will terminate with the termination of the lease. For instance, in case of a monthly tenancy which begins May 1st, it will expire April 30th, and the notice to vacate must be given not later than March 30th in order to leave a "clear month."

Feb. 28th.

310. Form of Notice by Landlord.—

Please take notice that you are hereby required to surrender and deliver up possession of the house and lot known as No. 4 James Street, in the village of Merritton, which you now hold of me; and to remove therefrom on the 31st day of May next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

Dated this 29th day of April, 1910. Yours truly,

To WALTER WINTERS JAMES SMITH
(*Tenant*). (*Landlord*).

311. Notice to Quit by Tenant.—

I hereby give you notice that on the 31st day of May next, I shall quit, and deliver up possession of the premises I now occupy as tenant, known as house and lot No. 4 James Street, in the village of Merritton.

Dated this 29th day of April, 1910. Yours truly,

To JAMES SMITH WALTER WINTERS
(*Landlord*). (*Tenant*)

312. Notice to Quit Not Acted Upon.—Upon the expiration of a notice to quit duly given by either party the tenancy ceases, and unless a fresh tenancy be afterwards created the landlord cannot distrain for subsequent rent, notwithstanding the tenant continues in possession for a year or more after the expiration of the notice.

313. Overholding Tenant.—The mere fact of a tenant remaining in possession after his lease expires, does not of itself constitute a new tenancy or bind either party to consent to a new term. There must be rent paid, or something else done by which a new tenancy is implied, or the tenant is only what is called an " overholding tenant," and in such case the tenant can move out at any time without notice and will only be liable to pay for the time actually occupied, which is not called rent but for " use and occupation," and possibly for damages for retaining possession after his lease expired.

During this time the landlord cannot distrain for rent because there is no tenancy, but he can, either

1. Bring an action of ejectment, by an ordinary writ of summons, or

2. He may apply to the County Judge for an order of eviction under the " Overholding Tenants' Act," or

3. He may by notice double the rent if he wishes to do so, and then if the tenant remains in possession without paying the rent it may be distrained for.

314. Notice Claiming Double Rent.—

To W. WINTERS, St. Catharines, Ont.

I hereby give you notice that if you do not deliver up possession of the house and premises situate No. 10 Queen Street, in the city of St. Catharines, on the first day of June next, according to my notice to quit, dated the 25th day of April, I shall claim from you double the yearly value of the premises for so long as you keep possession of them after the expiration of the said notice, according to the statute in that case provided.

Dated the 20th day of May, 1910.

Witness : JAMES SMITH

J. SAUNDERS. (*Landlord*).

315. Distraining for Rent.—The Common Law gives a landlord a right, under certain circumstances, to distrain for rent if the tenant does not pay it when due. In such cases any person may act as the bailiff for the landlord, whether a regular bailiff or not, and in such capacity possesses the same authority as the landlord possesses, but no more.

Distress may be levied under following conditions :

1. Rent may be distrained for the day after it is due and earned by occupation, whether payable by the month, quarter or year, or as the case may be ; but not until a demand has first been made for payment.

2. Rent payable in advance may be *sued* for the day after it is due. The common law gives the right to distrain for rent in *arrears*, but is rent actually in arrears at the beginning of the term, before it has been *earned*?

3. Seizure must be made after sunrise and before sunset, and never on a Sunday. The person seizing must not break open outside doors, nor open windows to enter. After he once legally gains admission to the building he may then break open any inside doors (except those of sub-tenants) that are not opened for him.

In Quebec seizure cannot be made on a Sunday, or a public holiday, or before seven o'clock in the morning, or after seven o'clock in the evening, without leave of the judge or prothonotary, except in case of fraudulent removal or if the goods are upon the highway.

4. In Ontario and most of the Provinces distress may be made any time within six months after the expiration of the lease if the tenant is still in possession and the landlord still retains his title or interest in the premises. If he has sold the property he cannot distrain; neither can the new owner; but it may be recovered by suit. Distress may be for any period up to six years' arrears of rent if there are no other creditors adversely interested.

In Quebec only five years' arrears may either be sued or distrained for.

Manitoba allows distress for only three months if renting by month or quarter, or for one year if less frequently than quarterly.

5. A tenant's goods cannot be seized if they are removed from the premises unless the bailiff saw them being taken away, or unless they have been removed "fraudulently and clandestinely" to prevent seizure for rent; that is, taken away in the night, or in any other secret way to escape seizure.

6. Goods purchased on a lien agreement are liable to seizure for rent if there is not enough other goods to satisfy the claim, but the landlord must pay the balance of the purchase price.

7. If the landlord distrains, or any other creditor seizes under an execution the tenant or debtor has the legal right to select and point out the goods and chattels for which he claims exemptions. For instance, there are six chairs named among the exemptions; hence the debtor, instead of taking six common chairs, may select six of the best in the house, and the same all through the list. He must also give up possession immediately or offer to do so in order to save his exemptions.

8. Every person who serves a Distress shall immediately give the person whose goods are seized a notice of the distress, giving the amount of rent distrained for, and an inventory of the articles taken, together with a copy of his charges and cost of seizure. If the tenant, after receiving such notice, neglects for five days from

date of seizure to pay the rent or replevy the goods the landlord is at liberty to sell the goods for the best price he can get for them, and after payment of rent and cost of sale if there is any surplus it must be paid to the tenant.

9. When a landlord has issued a distress he loses his right by abandoning it or withdrawing it, and cannot make a second seizure of the same goods for the same debt, unless there has been some mistake in the first seizure.

Quebec has a summary way of dealing with a tenant who does not pay his rent, that is effective and fair. When rent is due and unpaid, the landlord may give the tenant three days' notice to vacate the premises, and if he moves out within that time the overdue rent is remitted to him. If, after receiving this notice, he remains in possession, he loses his exemptions. (See Section 320.)

316. Form of Distress Warrant.—

To Mr. A. B.,

My Bailiff in this behalf:

I do hereby authorize and require you to distrain the goods and chattels of C. D. (tenant), liable to be distrained for rent, in and upon the.....now or lately in the tenure and occupation of.....situate on.....in the county of.....for the sum of.....dollars .....cents, being the rent for the term of.....due to me for the same on the.....day of....., in the year of our Lord one thousand.....hundred and ..... ; and for the said purpose distrain within the time, in the manner, and with the forms prescribed by law, all the said goods and chattels of the said....., wheresoever they shall be found, which have been carried off the said premises, but are nevertheless liable by law to be seized for the rent aforesaid, and to proceed thereon for the recovery of the said rent as the law directs.

Dated the.....day of....., 19....

E. F. (*Landlord*).

317. Tenant's Set-off Against Rent.—A tenant may set-off against the rent due a debt to him by the laudlord. It may be given either before or after seizure, and may be in the following or similar words:

Take notice that I wish to set-off against rent due by me to you the debt which you owe to me on your promissiory note for.....dated..... (or for eight months' wages at $20 per month, $160, or as the case may be).

Date Signature.

In case of such notice the landlord can only distrain for the balance due him after deducting any debt justly due by him to the tenant, and if he distrains for more he will be liable for illegal seizure.

318. Penalty for Illegal Seizures.—If a landlord distrains for more than the amount due, the tenant can enter an action and recover treble the amount of over-seizure ; and in case of distraining before rent is due the tenant may recover double the amount of goods distrained.

319. Boarders and Lodgers.—Lodgers are temporary lessees, and are subject to the same laws and have similar privileges in respect to the rooms they occupy as a regular tenant. Their goods are not liable to seizure for their landlord's rent.

In case they are distrained for rent due by his landlord, he must serve the superior landlord or bailiff, or other person levying the distress, with a written declaration that the tenant has no right of property or beneficial interest in the goods or chattels distrained, or threatened to be distrained. If he should owe the tenant for board or otherwise, he may state the amount and pay it over to the superior landlord or the bailiff, or enough of it to discharge the landlord's claim, if the boarder should owe that amount.

And such payment made by a boarder to the superior landlord is a valid payment on account due from him to the tenant.

If a boarder or lodger gets in arrears for board, the boarding-house keeper or hotel-keeper has a lien on the baggage and goods of such person and may retain them until the bill is settled. If the debt remains unsettled for three months the Ontario Statutes provide that the goods may be sold by public auction after giving one week's notice in a public newspaper. A landlord could not thus hold goods for rent unless he has actually distrained them, but a boarding-house keeper may. In case of suit for board or lodging a minor must pay, and there are no exemptions reserved. Board and lodging must be paid.

320. Exemptions from Seizure.—All the Provinces reserve a reasonable amount of property exempt from seizure under any execution and distress by mortgagee for arrears of interest. Ontario and Quebec also allow exemptions from distress by a landlord.

Where the debtor has more of any kind of property or articles than are exempt, he is entitled to make choice of the part he wishes to retain. The bailiff or officer making the seizure has no legal authority to interfere in the selection.

All the chattels so exempt from seizure as against a debtor, after his death, or in case he should abscond, leaving his family behind, the widow, or family should there be no widow, are entitled to.

Tenants in signing a lease for property should be careful that it does not contain an agreement to waive their right to the exemptions

the statutes reserve from seizure, for such Shylock forms of leases are very frequently used in those Provinces which allow exemptions against distress by a landlord.

In Manitoba and all the Western Provinces there are no exemptions from a landlord's warrant, except those under lien, and goods of third parties.

321. Giving up Possession.—The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up possession of the premises forthwith or be ready and offer to do so. The offer must be made to the landlord or his agent, and the person making the seizure is considered his agent for this purpose.

The surrender of the possession in pursuance of the landlord's notice is a termination of the tenancy, and the tenant has the option of paying the rent and costs and moving out, or to take his exemptions and move out without paying the rent or costs.

322. Seizing the Exempted Goods.—If the tenant neither pays the rent nor gives up possession after being legally notified to vacate, the landlord may give him another written notice similar to the following, after which he can seize and sell the exempted goods to recover the amount of rent due and the costs. The notice must be something like the following:

> Take notice, that I claim $..... for rent due to me in respect of the premises which you hold as my tenant, namely: (here briefly describe them, giving the number and street, or lot, concession, etc.); and unless the said rent is paid I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.
>
> Take notice further, that if you neither pay the said rent nor give me up possession of the said premises within three days after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell, all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.
>
> This notice is given under the Act of the Legislature of Ontario respecting the Law of Landlord and Tenant.
>
> Dated this.....day of.....A.D. 19 .
>
> *To* C. D. (*Tenant*). A. B. (*Landlord*).

After giving the above notice, if the tenant still remains in possession, the landlord can seize and sell the last article on the premises belonging to the tenant to recover the amount due, and costs. If the tenant does not wish to lose his exemptions he must take them and move out within the three days.

CHAPTER XVI

MARRIED WOMEN'S PROPERTY RIGHTS.

Unmarried Woman—Spinster; Widow.
Married Woman—Holding Property in her own Name; Selling or Willing her Real Estate; Dower; Order of Protection; Civil Relationship between Husband and Wife.

323. An Unmarried Woman, either as spinster or a widow, is as free to contract as a man in all the Provinces, Newfoundland and England.

324. Married Women Holding Property.—A married woman in Canada and Newfoundland may hold her own separate property in her own name. She may contract in respect to her separate estate, sue and be sued in her own name, and her own estate only be liable for such debts and contracts. She has the same remedies for the protection of her separate estate against her husband that she has against other parties.

In any proceeding concerning their property, the husband and wife are competent to give evidence against each other.

She now not only holds all her separate estate of both personal and real property free from the control, debts and obligations of her husband, but also entirely free from any estate therein by her husband during her lifetime. Even though she may not possess any separate estate at the time she enters into a contract she may still incur the liability, and bind whatever property she may thereafter acquire except such property as she is "restrained from anticipating." (See next Section for Quebec.)

325. Quebec's Special Laws.—In Quebec there is sufficient variation to make it advisable to give the main features separately. In this Province married women may be either in community of property with their husbands or separate as to property. If in community the husband has the administration of it, but at his death or a dissolution by order of the court she takes half the common property. Husband can only will his own half.

Community of property between husband and wife exists unless there has been a contract or covenant to the contrary; hence, if married without anything being said about a marriage contract it would be under community.

Immovable property belonging to her before marriage or bequeathed to her by parents or ancestors does not become part of the community, but is hers absolutely. The rents and incomes from such real estate belong to the community. But in the absence of separation of property wife cannot hold movable property in her own name, except what may be willed or bequeathed to her by third parties and declared to be her private property.

But when separate as to property she has the control of it, and may dispose of her movable property, but cannot sell or transfer her real estate or bank stock without the authorization of her husband, or, upon his refusal, an order from the court. Separation as to property may be obtained either by antenuptial contract or by order of court. She can administer her separate estate and transact her business in her own name. If she becomes a trader she must register her intention of carrying on such business. And if she is not separate as to property her goods would be liable for her husband's debts; also, if she has not separate estate either by marriage contract or a judgment of the court the husband would be liable for her debts. She cannot bind herself as surety for her husband. When possessing separate property she is required to contribute in proportion to means toward expenses of household and education of the children by her.

326. Disposing of Her Real Estate.—In all the Provinces except Nova Scotia and Quebec, she may not only hold her own real estate entirely free from her husband's control and debts, but she may dispose of it during her lifetime without her husband's consent or signature, and will it at her decease. A married woman may also sell her separate property direct to her husband, or the husband direct to his wife, without making the transfer through a third party

In Newfoundland the law is the same in each particular.

In Nova Scotia the wife cannot deed away real estate or dower in real estate without her husband joining in the deed. She may dispose of her real estate by will if the husband gives his consent in writing.

In Manitoba she cannot will it away from her children, but may make any distribution of it among them she desires.

In New Brunswick she can only sell or will her real estate subject to the husband's right of curtesy.

327. Dower is a life estate, usually the income from one-third, a wife has by law in the land held in fee simple by her husband during coverture in which she has not barred her right to dower. It is of course not available until after the husband's death. If marriage has been legally dissolved the right of dower ceases.

A wife is also entitled to dower in the equitable estates of the husband to which he was beneficially entitled and had not parted with in his lifetime.

In those Provinces which allow dower, if the husband dies possessed of real estate and makes a will, she can either take the portion left to her in lieu of dower by the will, or she can refuse to take under the will and claim her dower. If nothing is stated in the will that the bequest is in lieu of dower, she is entitled to both.

A wife need not be twenty-one years old to bar her dower. If a wife sign a deed it bars her dower; but a wife barring her dower in a mortgage only affects her to the extent of the rights of the mortgagee, and dower is due on the surplus after payment of mortgage. It is calculated on the basis of the amount realized from the sale of the land. If the land sold for $3,000 and the mortgage was $2,000 she would be entitled to the whole of the surplus, viz.: $1,000, during her lifetime.

In Ontario her dower is a life interest in one-third of the real estate, that is, she would have the use of the whole income from one-third of the real estate, or one-third of the income from the whole of the real estate.

In Manitoba, Alberta, Saskatchewan, Yukon and North-West Territories the wife has no dower in the lands of her deceased husband, but the Statute of Devolution of Estate gives her the same interest in the lands as in the personal property of the husband dying intestate, which share is hers absolutely, and not merely a life interest.

In Quebec the wife has one-half the husband's immovables.

In Nova Scotia, New Brunswick and Prince Edward Island the wife has the common law right of dower of one-third of her husband's real estate.

In British Columbia, Newfoundland and England the wife has one-third interest as dower, providing the husband dies legally entitled to lands without having absolutely disposed of them by deed or will.

328. Order of Protection.—Any married woman having a decree for alimony against her husband, or being for any legal cause separated from him, either through his cruelty, insanity, imprisonment in the Provincial Penitentiary or in gaol for a criminal offence; or whose husband, through habitual drinking or profligacy, neglects or refuses to support her, may obtain an order of protection, entitling her to the earnings of her minor children, entirely free from the debts and obligations of her husband and from under his control.

Order of Protection may also be procured for her own earnings and for the purpose of engaging in trade in those Provinces where such orders are required.

329. Civil Relationship Between Husband and Wife.—The civil relationships are the same between husband and wife as between other persons in community. The one may steal from or defraud the other, or be guilty of criminal acts towards each other. In all cases the injured party has the same redress they would have against other persons for similar acts. The husband cannot sell the wife's property or that of the children which comes to them personally by gift or otherwise. Husbands cannot mortgage wife's furniture, silverware, or any other goods or property belonging solely to her by gift or otherwise, unless she signs the mortgage.

Where a husband, through drink, violence, abusive language, or other vicious conduct, renders it impossible for the wife to live with him in safety and honor, she can leave him, and such conduct is sufficient ground to sustain an action for alimony.

CHAPTER XVII.

PRINCIPAL AND AGENT.

Agency—What Constitutes Agency.
Agent's Appointment—Four Ways.
Power of Attorney.
Agent's Authority—Of General Agents; of Special Agents.
Dealing with Agents—Ascertain their Authority.
Notice to Agent is Notice to Principal, and *vice versa*.

330. Agency is where one person transacts business for another. The errand boy, the clerk, the conductor, engineer, switchman, the commission merchant and the farm laborer are all agents as much as those engaged in selling machinery or fruit trees on commission or salary. In all branches of business where one person acts for another there is an agency.

Any person may act as agent that the principal employs; even a minor employed as agent may make any contract that his principal could make.

331. Agent's Appointment.—An agent may be appointed, (1) simply by word of mouth, (2) by writing, (3) by Power of Attorney, or, (4) it may be only gathered from facts and general course of business.

332. Appointment by Power of Attorney.—When the business to be performed by the agent is of such a nature that it requires him to sign notes, accept drafts, issue cheques, sign deeds, mortgages, etc., or to enter into other contracts under seal, a formal document under seal, called a Power of Attorney, is usually given. This Power of Attorney may be general—giving the agent power to transact all the usual business of the principal; or it may be specific—giving authority only to one or more particular acts, and no more.

333. Form of Power of Attorney.—

KNOW ALL MEN BY THESE PRESENTS, that I, James Everingham, of the town of Strathroy, in the County of Middlesex, and Province of Ontario, merchant, do nominate, constitute and appoint James Marion, of the city of Chatham, County of Kent, my true and lawful attorney, for me, in my name and on my behalf to (give in full the work to be done by Marion for Everingham).

AND for all and every of the said purposes hereinbefore mentioned, I do hereby give and grant unto the said James Marion, full and absolute power and authority to do and execute all acts, matters and things necessary to be done for the full and proper carrying out of all said matters entrusted to him and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said James Marion shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of August, 1910.

Signed, sealed and delivered in the presence of A. L. JONES. } JAMES EVERINGHAM. *

334. General Agent's Authority.—General agents are those who have authority to act in all capacities in the place of and for their principal, or act in a certain locality, or for a certain work or kind. General agents bind their principals, rendering them liable to third parties even for fraud or neglect on the part of the agent.

Commission merchants, secretaries and treasurers and managers of stock companies, employees of railroad and steamboat companies, etc., are all general agents.

335. Special Agent's Authority.—Special agents are those who are limited to a certain class of action or kind of work and do not bind their principal only in so far as they keep within the scope of their authority. If they pass beyond this, or are guilty of a

fraudulent act, they only render themselves liable and not their principal.

But if an agent should do business for the principal which he is not authorized to do and the principal accepts it, he thereby ratifies it, and thus becomes responsible, not only for that particular transaction but for all similar acts. Ratification of an act has the same effect as prior authority. Ratification may be effected in two ways: (1) By express words. In case of corporations and stock companies it is usually done by resolution. (2) By accepting the benefits accruing from the act.

By refusing to make the transaction his own, either by express words or by refusing to accept the benefits accruing from it, is disaffirming the act and frees him from liability.

336. Dealing with Agents.—Third parties should ascertain the authority possessed by special agents if they would protect themselves when contracting with such, if it is important to them that the principal should be held responsible.

It is not enough to bind a company, that an agent *declares* himself to be either a special or general agent, for his misrepresentation would not bind the company. The parties in dealing with him must demand the proof of his authority if they would be safe.

Money paid to an agent who has no authority to receive it cannot be recovered from the principal.

Money should never be paid to an agent or any other person for a note unless he has the note to deliver over.

A contract made with a special agent who is exceeding his authority cannot be enforced against his principal.

Notice given by the agent to third parties is notice given by the principal, and notice given by the third parties to the agent is notice given the principal and, at the same time, it was given to the agent. Payment tendered to the agent is payment tendered to the principal and *vice versa*.

James Everingham
per James Marion, Atty.

CHAPTER XVIII.

MASTER AND SERVANT.

Relations between Master and Servant.
Contract of Service—Oral; Written; When Presumed; Wages.
Employee's Contract; Notice to Leave.
Discharge—With Notice; Without Notice; Causes for Leaving.
Master's Liability for Servant's Acts.
When Servant Becomes Liable.
Things that Terminate the Contract.
Damages for Wrongful Discharge; For Wrongful Quitting.
Servant and Holidays.

337. The Relation subsisting between Master and Servant is in many respects the same as that subsisting between principal and agent.

In order to constitute a contract of hiring and service there must be either an *expressed* or *implied* mutual engagement binding one party to *hire* and remunerate and the other to *serve* for some determinate time.

338. Contract of Service and Hire.—Oral as well as written agreement between master and servant, and between master and journeyman or skilled laborer in any trade or calling, are binding unless the term exceeds one year.

If for a longer period than one year it must be in writing and signed by the contracting parties, and if for a shorter period than one year, but which does not commence in time to be completed within the year, it is required to be in writing.

No voluntary contract of service shall be binding on either party for a longer period than nine years from date of contract.

If no *express* contract has been made for hire between the parties a contract will be *presumed* if the service is performed, unless it is with near relatives, as with parent or uncle, etc.

If service has been performed without anything being said about wages the *law presumes* that the parties agreed for the customary wages for that kind of service paid in that community. But the law will not presume either "a contract of hire" or "an agreement to pay wages" where service is rendered with near relatives, as a parent or uncle. In such cases an expressed hiring must be *proved* in order to support a claim for wages.

A person agreeing to serve as laborer or clerk cannot be

compelled to fulfil his agreement, but damages may be recovered for breach of the contract.

A person agreeing to hire another for a day, week or month cannot be compelled to furnish work, but if the one hired presents himself for service each day he can collect his wages.

339. Contract of the Employee.—The employee must fulfil the agreement, whatever that may be, and to do this faithfully requires not only diligence, but his careful attention, skill and forethought. He is expected to obey all reasonable orders from his master, to be punctual and courteous, and to work every day except Sundays and holidays.

A flagrant violation of the implied agreement in any of these particulars renders him liable for damages or for discharge, as the case may be.

340. Notice to Leave.—A servant hired for a definite period, either for a day, a week, a month or a year, may, on the termination of the time, leave, or the master may discharge him without giving any notice.

Where the hiring is for no definite time and the wages paid so much per day, week, month, or year, when either party wishes to terminate the contract the other party is entitled to a "reasonable notice."

If paid by the week..... A week's notice,
If paid by the month..... A month's notice,
If paid by the year..... Three months' notice.

The notice need not be in writing, but where the time is longer than a week it would be much better to give a written notice.

341. Discharge without Notice.—If the employee violates the agreement by taking absences without permission, or in any of the following ways, he may be discharged without notice by paying him the wages due:

1. Wilful disobedience of any lawful order of the master.
2. Gross moral misconduct.
3. Habitual negligence in business, or conduct calculated seriously to injure the master's business.
4. Incompetence in the higher service where special knowledge or skill is required, or permanent disability through illness.

The wages to be paid in case of a discharge *for cause* are not necessarily in proportion to the time the servant has labored. The wages that are due must be paid, but the wages that may have been earned but not yet due, need not necessarily be paid.

342. Discharge with Notice.—Persons employed on a weekly or monthly service may quit or be discharged by giving a week's or a

month's notice ; or at a moment's notice by payment of a week's or a month's wages.

343. Employee Leaving.—The master's commands are presumed at time of contract to be reasonable ; the implements and machinery to be suitable for that kind of work, and so protected as to be reasonably free from danger. If, therefore, the master gives unreasonable commands and endeavors to enforce them, the servant has cause for leaving.

If the machinery or any particular machine used by the employee is not considered suitably protected and he gives notice to the employer, who still requires work to be done with the dangerous machine, it is a cause for leaving.

If any accident occurs after giving of such notice the employer is liable for damages.

If the employee used the machine, knowing it to be unsafe, without giving any notice of its danger, he cannot claim damages for an accident.

If the master does not pay the wages as per agreement the servant may procure a discharge and wages due by placing the matter in the hands of a Justice of the Peace, who deals summarily with such cases.

344. Master Liable for Servant's Acts.—The master's liability is not boundless, but justice and common sense fix certain well-defined limits. In general terms the master is liable for all those acts which are brought about through his instrumentality, as :

1. He is liable for the acts of his servant performed within the scope of his employment, however wrongful they may be, but he is not responsible for the wrongful act if it is not done in the execution of his authority and in the course of his employment ; and

2. Where in executing his orders with reasonable care and does damage ; or,

3. Where he does an injudicious act and does damage ; or

4. For injury done by the servant through drunkenness, if acting within the scope of his employment ; or

5. If he orders the servant to commit a trespass, or if the trespass results from the action to be done, the master is liable.

345. Servant's Liability.—A servant may render himself liable :

1. On contracts made on behalf of his master if he does not disclose the fact of his agency. When contracting in his own name for the employer he should always use words describing his capacity, as "~~agent for,~~" or "per," "pro," etc.

2. For damages committed on behalf of his master he is liable as well as his master, and to all third parties he stands as a principal.

3. He is also liable for a joint fraud committed with his master; for no contract of service compels a legal obligation to commit a fraud or do a wrong.

4. In *crimes* as well as in *injuries* he is liable, and cannot evade responsibility by saying that he was only a servant and acting under his master's orders.

346. Termination of Service.—A contract of service is terminated:

1. By lapse of time.
2. By completion of work to be performed.
3. By the death of the hirer. The servant must be paid wages up to that time.
4. By the death of the servant. His legal representatives will collect his wages for the time during which service was rendered.
5. By the assignment of the employer.

347. Wrongful Discharge, or Quitting.—If an employee be wrongfully dismissed his remedy is an action for damages against his master for the breach of agreement or contract, and unless he can show a reasonable excuse for discharging he may be made liable for wages for the whole time, but the employee must not sit down and do nothing and then sue for the wages at the end of the term. It is his duty to try and find employment, and if he succeeds, then whatever wages he earns during the term would be deducted from the amount of damages to be recovered for the breach of contract, that is, the loss he actually sustained could be recovered.

Any employee leaving before the expiration of the week or month or year, as the case may be, for just cause, or who is legally dismissed, can recover wages for the time he worked. But if he cannot show a valid cause for leaving or was discharged for proper cause he cannot recover wages *pro rata* for the portion of time worked.

348. Servant and Holidays.—Whether the servant or employee is compelled to work on Sunday and legal holidays depends altogether on the agreement made, and the nature of the work to be done. Some kinds of work require something to be done every day; for instance, the hired man on a farm would be compelled to feed and care for the stock on Sunday, milking cows, etc., unless there was an express agreement to the contrary. The same would be true as to the servant doing housework.

Unless there is an agreement, expressed or implied, to the contrary employees or apprentices cannot ordinarily be compelled to work on legal holidays, nor can they be discharged for absence, or for not working on such days.

Employees working by the week, month or year are entitled to pay for the legal holidays unless there is an agreement to the contrary.

CHAPTER XIX.

PARTNERSHIP.

Partnership—How Formed; Dangers.
Two Classes of Partnership—General: Limited.
Three Classes of Partners—Silent; Ostensible; Actual.
Registration—General; Limited.
Firm Name—Non-Trading Firms. Powers and Limitations of Partners. Partner Selling his Interest. Retiring Partner. Insolvent Partnership. Suits against Partners. Dissolution. Business after Dissolution.

349. Partnership is a contract between two or more persons, not an incorporated company, who join together for the purpose of conducting a certain business with an understanding to participate in certain proportions in the profits or losses. They may join their money, goods, labor and skill, or any or all of them. Firm, Company, House or Co-partnership are all synonymous terms used to represent a partnership business.

They are formed by agreement of the parties, either expressed or implied. The expressed may be either oral, written or under seal. The test of partnership is a "common fund" and "a community of profits," hence, in any case where parties are associated in business, if it is necessary to prove the existence of a partnership, about all that is needful to do is to prove that there is "a common fund" for the parties associated, and "a community of profits," and it would be difficult for such parties to establish the fact that there was not a partnership.

Partnership may be formed for commercial enterprises, manufacturing and mining in all the Provinces and Nowfoundland, but not for banking, railway construction, or insurance.

In Alberta, Saskatchewan, North-West Territories, British Columbia and Nova Scotia, no general partnership can now be carried on composed of more than twenty persons without registering as a company.

In Newfoundland the number is ten, but the other Provinces have no such limitations.

350. Danger of Partnership.—That laconic expression, "Partnership is a poor ship to sail in," is full of meaning. It does not take long for a dishonest, or incompetent, or stubborn partner to wreck any business. The joint-stock company, the main features of which

are given in the following chapter, is far preferable. If a particular name is specially desired, it is wise to register first as a partnership and then incorporate under same name, as the Government would not be likely to refuse it or change the name, it being already registered and in use by the same persons.

As partnerships are so generally falling into disuse, and really should be discouraged, only the most essential features are here given.

351. The Firm Name.—There are no restrictions placed upon the choice of a firm name for a partnership, as in case of a stock company.

Any individual who wishes to add "and Co." to his name, or to use any special name other than his own, may do so by registering a declaration to that effect, the same as though a number of persons were united, and he is liable to the same penalty if he does not register.

In Quebec a person doing business in any name other than his own, must not only register as a partnership, but all contracts, notices, advertisements, notes, cheques, invoices, etc., must bear the word "REGISTERED." The penalty for neglect to so use the word is a fine of $200.

352. Non-Trading Firms.—Firms that are not trading firms, such as a law firm, do not come under the partnership law, neither can they give a note as a firm. They may all sign it, but it is only as a joint and several note, the same as though they were not associated personally. The same is true in regard to church trustees, and the officers of social and benevolent associations.

353. Powers and Limitations of Partners.—Each general partner, unless prohibited in the articles of co-partnership, becomes a general agent of the firm, and has power to act for the firm, and to bind it in all matters that come within the limits of the business undertaken by the firm, but not for anything outside the regular partnership business.

One partner cannot bind the firm by an instrument under seal unless he has been empowered by an instrument under seal to do so.

354. Partner Selling his Interest.—A partner cannot sell his interest without the consent of his associates. If he should sell without such consent it voids the partnership agreement and a dissolution must take place. The remaining partners may accept the new member, but it makes a new partnership, even though no other change may be made in the articles of agreement and must be registered again. This difficulty would not exist in a stock company.

355. Retiring Partner.—Where no fixed time has been agreed upon a partner may determine the partnership at any time by giving a reasonable notice of his intention so to do to all the other partners. Where the partnership was formed by Deed, a notice in writing, signed by the partner giving it, is sufficient for the purpose.

A retiring partner from a partnership firm, in order to protect himself from the future liabilities of the firm must register a declaration of the dissolution at the office where the partnership is registered. (See Section 368 for form.)

This, of course, does not free him from *previous* liabilities incurred while he was a member. Nothing but a release from the individual creditors can free him from the past liabilities.

356. Insolvent Partnership.—A partnership firm becoming insolvent, the entire partnership property would be taken first to satisfy the firm debts. If this did not satisfy the claims, then the private property of all, or any of the general partners would, subject to priority of the partner's private creditors, be taken to satisfy the debts of the firm.

The Special or Limited partner in such case would only be liable to the amount of interest he has in the business, and he would not rank as a creditor until the claims of all others have been satisfied.

357. Suits against Partners.—Actions against the business of a partnership, both General and Limited, must be brought against the general partners in the same manner as if there were no special partner.

The partnership property may be seized for the private debt of a partner and the debtor's share sold. The court, or judge in chambers may order that such partner's interest may be charged for the payment of the debt, and may also appoint a receiver to receive such partner's share of the profits to apply on the debt.

358. Three Classes of General Partners.—

1. Dormant, silent or sleeping partner is one who has an interest in the business, but whose name does not appear. He is represented in the firm name "& Co."

2. Ostensible partner is one who lends his name to the firm but who has no financial interest in the business.

3. Actual Partner is one who has both an interest and whose name appears in the firm name. They are all liable to the public for partnership debts.

359. Two Classes of Partnership.—There are two distinct classes of partnership—General and Limited—both having the same powers but differing in their formation, registration and the individual liability of the members.

360. **General Partnership** holds the members not only jointly liable for the debts and liabilities of the firm, but each member is also personally liable for all the debts of the firm if the partnership assets are not sufficient to pay them in full.

361. **Limited Partnership** is composed of one or more persons called general partners, who conduct the business, and one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who are called special or limited partners. Such special partners are not liable for the debts of the partnership business beyond the amount of capital they invest in it.

This Special or Limited partner must not have anything whatever to do with the management of the business, and take no part in the work. He may give counsel to the firm, examine the state and progress of the business, but if he takes any part in its management he makes himself a General partner, and thus liable for the debts of the firm.

His name must not appear in the firm name by his knowledge or consent, or he becomes a General partner.

A continuation of the business beyond the time fixed for the Limited partnership without being filed again as at first, or a removal from the location of the business without being certified to and registered as at first, or if there is any alteration in the names of the partners or in the capital, or anything differing from the original certificate if not filed again as at first, it becomes a General partnership.

362. **Partnership Agreement.**—Some of the evil effects of a partnership association might be averted by a carefully prepared written agreement covering the following facts:

1. The name in full of each member, and their place of residence.
2. The nature of the business to be conducted.
3. The place where it is to be conducted.
4. The amount of capital that each partner invests.
5. What partners are General, and which are Special or Limited, if any.
6. If any partner make no cash investment, but whose experience or skill, etc., is his investment, that should also be inserted.
7. The date of commencement and duration of the partnership, if it is for a definite period.
8. If a division of work is agreed upon between the partners, such as for one partner only to sign all orders for goods, accept all drafts, issue the notes, etc., it should be clearly stated in the agreement.
9. Provision for settlement in case of the death or retirement of a partner, or for dissolution in case of disagreement and friction.

363. Registration of Partnership.—Every General partnership must be registered or filed within a definite time, which varies some in the different Provinces, or be liable to a heavy penalty.

Limited partnership is not deemed to be formed until the certificate is filed. If business is done before filing it is deemed a General partnership and the Special partners become liable for debts equally with the General.

The clerk's fee for registration is only nominal and varies in the different Provinces from 25c. to $1.00.

In Ontario Limited partnership must be filed at the office of the Clerk of the County Court before commencing business, and a General partnership at the County Registry Office where the business is carried on within six months after the partnership is formed. The penalty to each member of the firm for not registering is $100, one half to the prosecutor and the other to the Court.

In all the Provinces Limited partnerships must be filed before commencing business. The time for filing a General partnership varies in the different Provinces from sixty days to six months, and the penalty for not filing within the statutory time similar to that of Ontario.

364. In Quebec every married person doing business as a trader, whether alone or in partnership, is required to register within sixty days from date of commencing business or his marriage, whether he is under community or separate as to property, in the office of the prothonotary of the Superior Court of the district in which the business is carried on.

365. Form for Registration, for General partnership :

PROVINCE OF ONTARIO,
County of Wellington.

We James Smith and James Robinson of the city of Guelph, County of Wellington, Province of Ontario, hereby certify :

1. That we have carried on and intend to carry on the trade and business of Carriage Building and General Blacksmithing at Guelph, in partnership, under the name and firm of Smith & Robinson.

2. That the said partnership has subsisted since the 15th day of May, 1910.

3. That we are and have been since the said day the only members of the said partnership.

Witness our hands at Guelph, this 2nd day of June, 1910.

JAMES SMITH.
JAMES ROBINSON.

The above form of declaration is identical in all the Provinces as

provided by statute. Simply change the name of Province when used in other Provinces. In Quebec it must state for each partner whether he is single or married, and if married whether he is separate or in community as to property.

366. Form of Registration of Limited partnership:

Province of....
County of.....

We, the undersigned do hereby certify that we have entered into co-partnership under the style or firm of (B.D. & Co.), as (Grocers and Commission Merchants), which firm consists of (A.B.), usually residing at....., and (C.D.), residing usually at....., as General partners; and (E.F.), residing usually at....., and (G.H.), residing usually at....., as Special partners, the said (E.F.) having contributed $4,000, and the said (G.H.) $8,000, to capital stock of said partnership.

The said partnership commenced on the.... day of..... 19...., and terminates on the..... day of....., 19...

Dated this.....day of....., 19...

Signed in the presence of
T. M.,
Notary Public.

A. B.
G. H.
E. F.
C. D.

The certificate for a Limited partnership must be signed before a notary public, who shall duly certify the same. If any false statement is made in such certificate all the members shall become liable as General partners.

367. Dissolution of Partnership.—The following are among the things that call for a dissolution of partnership:

1. Insolvency of one of the partners in his private business.
2. Insanity of one of the partners.
3. Death of one of the partners.
4. Mutual consent.
5. Marriage of a female partner in some of the Provinces.

The above events do not necessitate a dissolution, but they are a sufficient cause, and if any of the firm should demand a dissolution it must be complied with.

They are also dissolved by expiration of time, by the completion of the work for which they were formed, or by a decree of the court.

In the case of a dissolution, notice must be given to the public in the official *Gazette*.

It is also customary to give notice in the local press and to send circulars to each individual firm with whom business has been done.

In all cases it is necessary when dissolution takes place before the term of partnership expires that a declaration of dissolution be filed in the same office in which the certificate of partnership was filed at

its formation. And for Limited partnerships, in addition to the registration, it is required for Ontario that the notice of dissolution be advertised for three consecutive issues both in the *Ontario Gazette* and a local newspaper.

368. Registration of Dissolution.—The following is a statutory form provided by the various Provinces :

PROVINCE OF ONTARIO :
County of Lincoln.

I James Robinson formerly a member of the firm carrying on the business of Carriage Building and General Blacksmithing at Guelph, County of Wellington, under the style Smith & Robinson, do hereby certify that the said partnership was, on the 2nd day of September, 1910, dissolved.

Witness my hand at Guelph, this the third day of September, 1910.

JAMES ROBINSON.

The pronoun " we " may be used instead of " I " at the beginning of above declaration, and all partners sign it if desired. The above form would be suitable for a retiring partner to register if the other members of the firm did not file a declaration of dissolution.

369. Notice to Public of Dissolution in newspaper or *Gazette* may be similar to the following :

Notice is hereby given that the co-partnership heretofore subsisting between the undersigned as General Merchants, under the firm name of Dell, Austin & Co., at Brantford, Ont., has been this day dissolved by mutual consent. All debts due to the said partnership are to be paid to W. A. Dell at his office, 106 Main Street, and all partnership debts to be paid by him.

WM. A. DELL.
E. AUSTIN.
P. DE WITT.

Brantford, June 20th, 1910.

370. Business after Dissolution.—After dissolution no partner has a right to sign the firm's name without a power of attorney. If a note has to be given the only alternative is for each partner to sign his name separately.

CHAPTER XX.

JOINT STOCK COMPANIES.

Joint Stock Company—Nature and Powers of.
Three Kinds—By Act of Parliament; By Letters Patent; By Registration.
Advantages of Incorporation—Prospectus; How to Form a Company; Advertisements; The Petition, Name, Place of Business, Government Fee; Extra Provincial Companies.
Supplementary Letters Patent—When Required.
Board of Directors—Liabilities of; Books to be Kept.
Capital Stock—Nominal Capital; Unpaid Stock; Transfer of Stock; Shares.
Shareholders—Voting; Dividends; Annual Statement.
Liability—Limited; Double; Use of word "Limited."
Companies by Registration—Alberta, Saskatchewan, North-West Territories; British Columbia; Nova-Scotia, Newfoundland; Memorandum of Association, Articles of Association; Limited Liability; Unlimited Liability.

371. A joint stock company is an association of individuals possessing corporate powers, enabling them to transact business, sue and be sued as a single individual.

There are three methods by which corporations are constituted in Canada: (1) By Special Act of Parliament. (2) By Letters Patent issued under the Companies Act. (3) By registration. It is the two latter only that will be dealt with in this chapter.

The incorporation of a joint stock company may be effected either under Dominion or Provincial authority. Banking, railway, telegraph, telephone, and insurance companies cannot obtain a charter under the Companies Act, but must be incorporated by Special Act, as the powers they seek are so extensive that special legislation is necessary to determine their limit and safeguard public interest.

In Nova Scotia, Alberta, Saskatchewan, North-West Territories, British Columbia and Newfoundland joint stock companies are formed by registration instead of by Letters Patent, and they will therefore be treated separately at the end of this chapter.

372. Advantages of Incorporation.—Among the advantages of incorporation the three following are of chief importance: (1) A larger number of persons, including employees, may become financially interested in the business than would be possible in any other way. (2) Ample capital may be secured and, if desired, from small investors. (3) Perpetual succession, as the retiring, or coming in, or death of members would not lead to a dissolution, as in case of a partnership. (4) And, lastly, the limited liability of shareholders.

If the business does not prove successful no one need lose more money than the stock he subscribed for, thus differing entirely from an individual business or a general partnership, where household and private property would also be liable.

373. Prospectus.—In cases where capital is desired from the public outside the parties immediately interested in the formation of the company, a Prospectus is usually issued. It should contain for its heading the name of the company, and set forth the prospective advantages and gains *truthfully*. The names of the Provisional Directors are always given, and the document would naturally close with a blank form of application for shares. To protect the public each Province has passed stringent legislation against misrepresentation in the Prospectus, and given in detail facts and information it must contain. A Prospectus should not be issued before "The Companies Act" of the Province under whose authority incorporation is to be obtained has been examined, as the penalties for misrepresentation or non-compliance with the statutory requirements are severe.

374. How to Form a Company.—About the first step taken either by the solicitor, or any person doing the official correspondence, is to communicate with the Secretary of State, Ottawa, or with the Provincial Secretary, as the case may be, concerning the formation of the company, who will forward a copy of the Act, together with the necessary instructions, and also a blank petition for the signatures of the applicants. This is always necessary, as the regulations are liable to be changed by Order-in-Council, and it saves time to get the information direct from the Government at the time, and also because the blank forms cannot be obtained from any other source.

If the business of the Company is intended to extend to more than one Province, as, for instance, a steamship line between Toronto and Montreal, then the charter should be taken from the Dominion Government, and the application should be addressed to

The Honorable
The Secretary of State,
Ottawa, Canada.

But if the business would be confined to the one Province, as a mercantile firm or manufactory, or an electric railway between two neighbouring towns, then the charter would be obtained from the Provincial Government, and the application addressed to

The Honorable
The Provincial Secretary,
Toronto, Ont.

Or Winnipeg, or Halifax, or as the case may be.

The next thing to be done is to open a Stock Book, which gives the name of the company, the amount of capital, the number of shares and the amount of each share. In this book the subscribers enter their names and the number of shares they wish to take; when the proportional amount of stock has been taken and the required amount paid in, application may be made for Letters Patent.

In Ontario the stock book must be made in duplicate, and one of the duplicates deposited in the office of the Provincial Secretary.

375. Advertising in the Official Gazette.—Before the application can be made for incorporation under the Dominion Act, the applicants must give at least one month's previous notice in the *Canada Gazette* of their intention to apply for the same.

All the Provinces and Newfoundland require the notice to be given in the Official *Gazette* in certain cases, and the information furnished by the Government on application, as stated in previous section, will be a full guide in every detail.

376. The Petition.—The Government furnishes the blank printed forms of Petition and full instructions for signatures. After being filled out according to instructions it is forwarded to the Secretary of State, or the Provincial Secretary, as the case may be, accompanied by the Government fee, affidavits and copy of advertisement where advertisement is required.

The Petition for all the Provinces is nearly identical, and requires the following information: The name, residence and occupation of each applicant in full; the proposed corporate name of the company; its object or nature of business; the names of its first or Provisional Directors; and the amount each applicant or petitioner subscribed for in the Memorandum of Agreement and Stock Book.

377. The Name of the company must not be the same or even similar to that of any other company, whether incorporated or not, and must not be objectionable in any other way. It is well to register the name first as a partnership, as that virtually secures the name desired. The word "Royal" cannot be used as part of the name without a special license from the Home Office.

378. Place of Business.—All the Provinces and Newfoundland require every limited company, whether by Letters Patent or by Registration, to have a registered place of business within the Province or Territory to which all communications may be addressed.

379. The Government Fee varies in all the Provinces. It runs from $10 to $500, according to the nature of the company and the amount of capital stock. As the Government fee is liable to be changed by Order-in-Council at any time, it would be useless to give them here.

Feb. 26, 1924.

380. Extra Provincial Companies, that is, those incorporated in any other Province of the Dominion or in any other country, need not obtain fresh Letters Patent, but must secure a license or register in the Provinces in which they wish to establish branch places of business. They must also make the required Government return annually. If they neglect to register, or to make such returns, they are liable to heavy penalties.

381. Supplementary Letters Patent are required where

1. The company would desire to change its corporate name.
2. To obtain further powers.
3. To either increase or decrease its capital stock.
4. To subdivide its existing shares.

Companies formed by Registration may make similar changes by special resolution and the approval of the Registrar of Joint Stock Companies.

382. Board of Directors.—The provisional directors named in the Letters Patent manage the affairs of the company until the first general meeting of its members. The Ontario Act requires the Provisional directors, by registered letter addressed to each member, to call the first general meeting within two months after date of the Letters Patent, for the election of directors and the further organization of the company, enactment of by-laws, etc. If the directors do not call such meeting within two months then any three or more of the shareholders have power to call such meeting. Similar requirements exist in all the Provinces. The directors are elected annually by the stockholders and during their term they have the whole management of the business. No person can be a director unless he holds stock absolutely in his own right and is not in arrears on any call on stock. Election of directors must be by ballot.

The required number of directors varies in each Province; but in all the Provinces the number must not be less than three.

The board of directors continue to hold office until their successors are duly elected at a general meeting of shareholders.

Directors cannot vote or act by proxy, but shareholders may.

383. Books to be Kept.—The law requires certain books to be kept, giving the names of the stockholders and the shares owned by each, the amount paid in on stock, the names and addresses of the directors. They are as follows:

1. A book containing copy of Letters Patent.
2. A register of shareholders present and past.
3. A register of directors.
4. A register of transfer of stock.

5. The stock ledger, giving number of shares held by each stockholder.

6. A minute book containing proceedings of all meetings.

7. And, lastly, books of account containing a full record of all the company's business.

All these books are to be at the head office of the company, and open for inspection by shareholders and creditors at all reasonable hours on business days.

384. Capital Stock of a company is that which has been subscribed. It may be all paid up or only partially paid. It may be common stock or "preferred stock." The common stock entitles its holders to share *pro rata* in the profits of the business. Preference stock is that which is issued entitling its holder to a certain rate of dividend out of the net profits in priority to the holders of common stock. Watered stock is that which is issued, generally to previous stockholders, as fully paid up, when only a part or none of it has been paid. Such stock is always issued to defraud the public in some way. Nominal or authorized capital stock is the amount named in the charter as the maximum amount that can be taken up.

385. Unpaid Stock.—Stock that has been subscribed for but not paid up stands as a resource, and is a security to the public, and if the company becomes insolvent each stockholder would have to pay up the balance of his unpaid shares, but no more. Creditors cannot sue the shareholders until they have failed to recover from the company property.

386. Transfer of Stock.—Shares in a stock company are personal property. Fully paid-up stock may be transferred almost as freely as a promissory note, except where the "certificate of stock" places some restriction on its transfer, which, of course, must be complied with. Shares not fully paid up can only be transferred where the directors are willing to accept the transferee and a record of the transaction is made in the company's books.

In Quebec, by amendment of 1905, when shares in any stock company or bonds debentures or debentures stock are transferred, a tax of 2 cents on every $100 of par value must be paid in stamps, affixed to the transfer book.

387. Shares.—The capital stock of incorporated companies is by statute required to be divided into a number of equal portions, called "shares." Each share is an even amount, with no fractions or cents, and no shareholder can purchase less than one share.

388. Shareholders in a company are not like partners in a partnership business. They may contract with the company the same as any other person, sue and execute their judgments against the

company's goods, and in case of winding up they rank with the other creditors.

They have, however, no right to the property of the company nor to the profits until a dividend has been declared. In conducting company business they can only work through the company. They cannot be expelled from the company nor deprived of their right to vote by either the officers, or directors and the other shareholders combined.

389. Voting.—The person whose name is on the register for shares has a vote for each share he holds. An absent person may vote by proxy, and a person holding shares in trust for another person may vote on them if his name stands on the register as holding such shares in trust. A chairman may vote on his own shares and also has a casting vote in case of a tie. Directors can only legally vote at the meeting, and cannot elsewhere give separate assent to proceedings.

390. Dividends can only be paid out of the profits. If there has not been a profit over the running expenses, no dividend can be declared, for if the officers were to declare a dividend out of the capital, they would make themselves personally liable for the amount of dividend in case the company went into liquidation. Dividends that might be declared by the directors after the transfer of any shares are payable to the purchaser, whether the transfer has yet been registered or not, and no matter when the dividend was earned.

391. Liabilities of Directors.—Directors act in the double capacity of agents and trustees for the company, and must therefore act within their authority to bind the company. The public have opportunity to know, and the law presumes them to know the powers of companies, so that acts of the Directors where they exceed their authority are voidable and may be repudiated by the company. Directors are forbidden by law to have any pecuniary interest in any contract with the company, and must not purchase property from the company, even under execution or foreclosure sale.

The Dominion Act and all the Provincial Acts make Directors personally liable to creditors for the amount if they pay dividends when the company is actually insolvent, for in such case the dividend is paid out of the capital.

Directors are also made liable to laborers and apprentices for a certain number of months' wages if they fail in an attempt to collect them from the company by way of execution.

Managing Directors and officers in signing notes, accepting drafts, etc., if they do not use the name of the company with the word "Limited" they render themselves personally liable for the amount, and the company liable to a fine.

The Directors are also personally liable for knowingly permitting the using of a seal without the word " Limited " on it.

All the Provinces make the directors liable for false statements in Prospectuses, for malfeasance in office, for false Government reports of the condition of the business; and some of the Provinces if they fail to make the required returns to Government make the Directors and officers responsible for the neglect liable to a penalty as well as the company.

No director should fail to have a copy of the Act.

392. Annual Statement.—The Government each year furnishes the company with blank forms to be filled in by the officers of the company, giving detailed information on company affairs, the stockholders, transfers, etc., one copy of which to be forwarded to the Government and the other to b posted up in the head office of the company before a certain day named.

If this is not done by the proper date the company, in nearly all the Provinces, incurs a penalty of $20 a day for every day during which the default continues. And every director, manager or secretary of the company who knowingly or wilfully permits such default incurs the like penalty.

393. Limited Liability.—In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. This is the great distinctive feature of joint stock companies. The company may be wrecked by bad management and subscribers lose the amount of the stock they purchased, but there their loss stops. Creditors cannot touch their private business nor enter their homes to seize and sell. It is very much safer than a general partnership.

394. Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he has subscribed for. That is, in case the bank fails, he is required to pay the whole of his stock, and then another sum of same amount if necessary, to pay the bank's liabilities.

395. Use of word " Limited."—This word, " limited," is the notice to the public that they are dealing with a company of only limited liability; hence, rigid legislation enforces its proper use. The Dominion Act requires that every incorporated company shall keep painted or affixed its name, the word " Limited " after the name on the outside of their office or place of business in legible letters, also on its seal and invoices, receipts, notes, drafts, cheques, indorsements, advertisements, letter heads and wherever the name appears. Penalty for neglect so to use it is $20 per day.

Ontario and all the other Provinces have similar requirements

and every company, director, manager or employee who is responsible for neglect to properly use this distinguishing word is made liable to a similar penalty.

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396. In British Columbia, Nova Scotia, Alberta, Saskatchewan, North-West Territories and Newfoundland stock companies are formed by Registration instead of by Letters Patent, as in the other Provinces, and the Acts are all very similar. In British Columbia, Nova Scotia, Alberta, Saskatchewan and North-West Territories no company consisting of more than twenty persons, and in Newfoundland, ten persons, can carry on business within the scope of the Stock Companies' Act for the purpose of gain unless registered as a stock company, or unless working under some other Act or Letters Patent. The remainder of this chapter applies to British Columbia, Newfoundland, Alberta, Saskatchewan, North-West Territories and Nova Scotia.

397. Memorandum of Association.—To form a company any five or more persons, twenty-one years of age, may subscribe their names to the memorandum of association, and forward the same with the necessary affidavits, Government fee, etc., to

The Honorable
The Registrar of Joint Stock Companies,
Victoria, B.C.,
or Regina, as the case may be,

and thus become an incorporated company either with or without limited liability, according to the articles of association.

If any incorporated company carries on business when the number of members is less than five for a period of six months thereafter, every member that is cognizant of that fact becomes personally liable for debts contracted during such period, the same as in a General partnership.

In Newfoundland any three or more persons may subscribe their names to a memorandum of association and register as a company. The correspondence is addressed to

The Honorable
The Colonial Secretary,
St. John's, Nfld.

398. Liability Limited to Unpaid Shares.—Where the liability is to be limited to the amount unpaid on the shares, the memorandum of association must contain:

1. The name of the proposed company, with the addition of the word "Limited," as the last word of the name.

2. The place where the registered office of the company is to be located.
3. The objects for which the company is to be established.
4. The time for its continuance, if for a fixed time.
5. A declaration that the liability of the members is to be limited.
6. The amount of capital, divided into shares of fixed amount.

No subscriber can take less than one share.

399. Liability Limited by Guarantee.—Where the liability of members is to be limited to the amount they respectively undertake to contribute to the assets in the event of the company being wound up, the memorandum of the association must contain:

1. The name of the proposed company, with the addition of the words "Limited by Guarantee" as the last words of the name.
2. Place of head office.
3. Object.
4. A declaration that each member undertakes to contribute to the assets of the company a sum not exceeding a specified amount in case the company is wound up while he is a member, or within one year afterwards, in settlement of liabilities contracted before the time at which he ceased to be a member.

400. Unlimited Liability.—In companies where there is no limit placed on the liability of the members (general partnership) the memorandum of association, besides giving the proposed name of the company, place of business, and object, must also be signed by each subscriber in the presence of, and to be attested by, at least one witness. This, when registered, binds the company and their members, their heirs, executors and administrators, to observe all its conditions as though it were an instrument under seal. This is the same for the other forms of company as well.

401. Articles of Association.—The memorandum of association may, in case of companies limited by shares, and shall in case of a company limited by guarantee, or an unlimited company, be accompanied by Articles of Association prescribing the regulations by which the company is to be conducted.

402. Features Same as Other Provinces.—For name, see Section 377; stock, 384 and 387; annual statement for those divided into shares, 392; books to be kept, 383; those limited by shares or guarantees to have full name on outside of building, etc., 395: dividends, 390; liability of directors, 391; prospectus, 373.

CHAPTER XXI.

MECHANICS' AND WAGE-EARNERS' LIEN ACT.

Mechanics' Lien—Several Claims may be Joined. Claim may Cover Several Buildings. Owner's Protection. Registration of Liens. When Liens Cease. Priority of Lienholders. Priority for wages. Lien on Articles Repaired.

403. Nature of Lien.—According to the provisions of the above Act unless he signs an express agreement to the contrary, every person who performs any labor, or furnishes any material to be used in the construction of any building, bridge, fence or anything, in fact, from a cistern to a railroad, for any owner, contractor, or sub-contractor, has a lien upon the property thus erected, and upon the land occupied thereby for the price of such work or material.

The following are the main features of the Mechanics' Lien Act, which are the same in all the Provinces:

404. Limit of Lien.—The lien whether claimed by the contractor, sub-contractor or other person, cannot make the owner liable for more than the sum justly owing by the owner to the contractor (which includes the wages or material for which the contractor is liable to those under him).

A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein. Each lien must, however, be verified by affidavit.

405. Protecting Owners.—Each of the Provinces requires the owner as the work progresses to retain a certain percentage of the money due the contractor for thirty days after the completion or abandonment of the work, with which to satisfy lien claims. The sum varies according to the cost of the contract. He is not liable for any greater sum than this for any liens of which he has not, before making payment, received notice in writing.

406. Registration of Liens.—A claim for a lien may be recorded in the Registry Office, or Land Titles Office for the district in which the land is situated, and in British Columbia in office of the nearest county court registry in the county where the work is done.

A claim for a lien may be registered any time while the material is being furnished or the labor performed, or within thirty days after completion, in nearly all the Provinces.

407. When Liens Cease.—Every lien which has been duly registered absolutely ceases to exist, except in Saskatchewan, after ninety days from the time when the work or service ended, or the materials were furnished, or the expiry of the period of credit, unless in the meantime an action to realize the claim under the provisions of this Act has been instituted and a certificate thereof duly registered.

408. Priority of Lienholders.—Liens have priority over all judgments, executions, assignments, or garnishments issued after such lien arises.

Claims for wages have priority over all other liens in most of the Provinces to the extent of thirty days.

409. Lien on Articles Repaired.—Every mechanic or other person who has bestowed labor, money or material upon any chattel, as a wagon, organ, etc., has a lien upon it for the amount of his claim, and may hold it until it is paid. He must keep the article in his possession to retain the lien. The property must also be cared for as though it were in a warehouse.

If not paid within three months it may be sold by public auction by giving the owner notice and one week's notice in a local newspaper.

CHAPTER XXII.

WILLS—LAWS OF INHERITANCE.

Wills—Who can Make a Will; Who can Write a Will; Only One Will; Wills of Soldiers and Sailors; Requisites of a Valid Will; When Wills Take Effect; Probate; Devisee; Legatee; Executor; Intestacy; Administrator; Laws of Inheritance.

410. A Will is a written instrument left by a person in which he gives directions for the disposal of his property after his death. A person to make a valid will must be of the age of twenty-one years, of sound mind, and free from constraint or any undue influence.

In Newfoundland a person seventeen years of age may make a valid will.

Soldiers in service and sailors at sea may dispose of their effects by simply signing a written statement of how they wish their personal property to be disposed of. But soldiers in barracks are not included in this special provision.

In the interpretation of wills regard will always be had to the

circumstances existing at the time the will is made, and to the evident intention of the testator. If there is any discrepancy between the various clauses of the will, what was written last will hold over the first written.

A father is not compelled to will any portion of his property to the children, but in Ontario and the other Provinces which give the wife a right of dower, he cannot deprive her of her life interest in his real estate.

411. Who May Draw a Will.—The testator may write his own will if he desires to do so. In all the Provinces except Quebec any person who can write clearly the desires of the testator may be employed, but prudence would dictate that none but a person of experience and ability should be entrusted with so important a matter.

In Quebec there are three forms of wills:

1. Wills in Authentic Form, which must be made before two notaries, or one notary and two witnesses of the male sex and of full age. They need not be probated, but the notary grants authentic copies.

The clerks and servants of the notaries cannot be witnesses. The notaries must not be related to the testator in the direct line, or to each other, or in the degree of brothers, uncles or nephews. The witnesses may be related to the testator, or the notaries, or to each other. Legacies in favour of the notaries or witnesses, or to wife or husband of the notaries or witnesses, or to any relation in the first degree are void.

Ministers of religion may be witnesses, but cannot act as notaries and write Wills in Authentic Form.

2. The English form, which any person can write, must be signed in the presence of at least two witnesses of either sex. It must be probated

3. The holograph will, which is one wholly written by the testator. It needs no witness, but must be probated.

412. Requisites of a Valid Will.—It should contain:

1. The name in full of the testator, his occupation and residence.
2. It should plainly state that this is his last will and testament.
3. That it revokes all former wills and bequests.
4. It should provide out of what funds debts and expenses are to be paid.
5. A clear and definite statement of how the property is to be divided, and full particulars of each bequest. Where all the property of the testator is left to one person it is not necessary to specify the property in detail.

6. It should give the Christian names in full of all the beneficiaries, and if there are more than one person of the same name, the occupation and residence should be given so a mistake would be impossible.

7. It should be properly dated, and the signature of testator witnessed by at least *two persons*. If only one witness signed there would be an intestacy.

8. The testator should sign at the foot of the will in the presence of the two witnesses. If the testator is unable to write his name it may be signed by some other person for him, but in his presence or by his direction. Or he may sign by making his mark or having his hand guided while making his mark, providing he understands the meaning of what is being done and assents to it.

9. The two witnesses must not only be both present together and see the testator sign the will, but they must sign it themselves as witnesses in the presence of each other, as well as in the presence of the testator.

10. The witnesses in all the Provinces, except Quebec, may be minors if old enough to understand what they are doing, and to give evidence in court if necessary. An executor could also be a witness. If a legatee or devisee were a witness it would not invalidate the will, but it would void the bequest to such witness, or to a husband or wife of the witness. The death or subsequent incapacity of either or both the witnesses before the death of the testator would not invalidate the will.

11. No seal is necessary to a will, though sometimes a seal is attached.

413. When Wills Take Effect.—Wills do not take effect until after the testator's death, and all gifts and legacies become " vested " at the same time, whatever the interest may be. If such person should die before obtaining possession of the bequest or legacy he could dispose of it by will; or, if no will were left, it would go to his heirs, and if such person were married the husband or wife would take the same interest as though the property were actually in possession.

414. Probating Wills.—After the decease of the testator, as soon as convenient or becoming, the will should be read in the presence of the parties interested, and then proved in the Surrogate Court.

Executors may perform the duties imposed upon them by the will without probating it, except in Quebec for wills in the English form, but it is customary to probate wills as that constitutes an authoritative declaration by the Surrogate Court that the will is valid. It

also clothes the executor with the legal authority to administer the affairs of the estate if there should be friction, and enter the courts, if necessary, and draw the testator's money from bank.

415. Devisee or Legatee is the one who receives property under the will. Devisee is used when the bequest is in land.

416. Executor is the person named in the will as the one who is to carry out its provisions, and look after the property until its distribution among the heirs is accomplished.

417. Administrator is the one appointed by the Surrogate Court or Court of Probate to settle the affairs of the estate of a person who dies without leaving a will, or who leaves a will but fails to appoint an executor who acts.

The regulations in each of the Provinces concerning the settlement of estates vary considerably, as also do the succession duties; hence, it is advisable for a person acting as an executor or administrator to either consult a lawyer or take full instructions from the office where wills are probated.

But a person dying intestate and leaving real and personal property, it is not legally compulsory for any of the heirs to take out letters of administration. If the heirs can all agree as to the distribution of the property among themselves, they can draw up an agreement to that effect, which, being signed by all, and sealed, will bind all to abide by it. And if land is to be sold, the widow and heirs all joining in the deed give a good title.

418. Intestacy is where a person dies without leaving a will, or where a will is left, but which proves to be invalid. In such case, if property is left, unless the heirs can agree among themselves as to the division of the property, it must be distributed according to the Statutes of the Province in which the property is situate. If the intestate left money in a bank, or other debts due, it is necessary for some person to be appointed administrator, to draw the money or to collect the debts. (See following section.)

419. The Laws of Inheritance are very similar in all the Provinces, and when no valid will is left by deceased the property, both personal and real, must be divided among the heirs according to Statute unless the heirs among themselves agree to divide it otherwise.

CHAPTER XXIII.
INSOLVENT DEBTORS

Bankruptcy Act; Authorized Assignment; Creditors Relief Act.
Fraudulent Conveyances and Transfers.
Absconding Debtors—Seizure of goods; Arrest of Debtor.
Garnishment—Wage-earners' Exemptions.
Judgment: Executions—Executions binding Land; Judgment Summons.
Entering Cases in Small Debts Courts; Defence Statement.

420. Bankruptcy Act. The new Bankruptcy Act, Chapter 36, of 1919, Statutes of Canada, rendered all the Insolvency and Assignment laws of the various Provinces null and void. It applies to all persons, firms and Corporations doing business in Canada, except farmers, and wage-earners earning less than $1,500 per year.

The means provided for its operation include: (1) The designation of certain Courts in each Province as Courts of Bankruptcy to deal with all bankruptcy and insolvency proceedings throughout the Dominion; (2) The appointment of qualified persons as Authorized Trustees for the administration of insolvent estates under the Act. Creditors are empowered to appoint at a general meeting from one to five Inspectors of the administration of the estate by the Trustee.

The Act enumerates eight different classes of Acts called Acts of Bankruptcy, any one of which, if a debtor commits, is allowed to be ground upon which any creditor to whom the debtor owes not less than $500, or the aggregate amount to two or more creditors who join in the action, may within six months, petition the Bankruptcy Court having jurisdiction where the debtor resides to have the debtor declared a bankrupt, and a Receiving Order for the estate to be made.

421. At any time before such receiving order is issued a debtor who owes more than $500, may make an Assignment for the general benefit of his creditors to an "Authorized Trustee." Any assignment other than this "Authorized Assignment" is null and void.

The Creditors Relief Act of the various Provinces described in section 423 remains in force, but if any property or money remains in the hands of the Sheriff at the time the receiving order, or the authorized assignment is made it will be taken over by the Trustee.

If there is no evidence that the debtor had been guilty of any misconduct, the Bankruptcy Court has authority to grant a discharge from claims not paid in full.

422. Fraudulent Conveyances and Transfers.—Every gift, or gratuitous contract, whether by deed or otherwise, by a person who knows that he is on the eve of insolvency is deemed to be made with the intent to defraud his creditors and may be set aside.

Also every *bona fide* conveyance or transfer of either real estate or personal property made by a person on the eve of insolvency, with the intent to delay or defraud his creditors, is void against such creditors, providing the other party knows his intention and acts in collusion with him.

A chattel mortgage given to secure a creditor, or in settlement of a debt previously contracted, or to secure a surety if given within 60 days of making an assignment, is void toward other creditors.

But all sales in the regular course of business, whether on credit or for cash, before an assignment is actually made, are valid.

All *bona fide* payments made in the ordinary course of trade to innocent parties for value are valid.

A conveyance of real estate by an insolvent, where the purchaser in good faith bought and paid a fair consideration for the same, cannot be set aside.

To set aside a payment, or sale, or transfer of property as fraudulent against creditors, it must be shown that there was a "fraudulent intention"—that the debtor intended to defraud his creditors, or some one of them, also that the vendee or transferee knew his intention, and also that such transaction actually produced injury to the creditors. Action to set aside must be commenced within 60 days, in Quebec one year. The provisions of the "Bulk Sales Act" prevent secret sales in bulk by merchants.

423. Creditors' Relief Act.—In the small debts courts in all the Provinces such as the Division Court in Ontario, judgments from them may be executed and the money realized by the bailiff paid over to the creditor at once without regard to other creditors.

But under the provisions of the Creditors' Relief Act such priority among execution creditors has been abolished in all the Provinces when the execution issues from any of the higher courts.

When the sheriff levies money on an execution from a County or High Court he is required to retain it for thirty days and enter the particulars of the execution in a book kept for that purpose, which is open for public inspection, and then to ratably distribute it among all the creditors who have placed their claims with him. (See Section 420.)

424. Absconding Debtors.—The goods of a debtor moving out of the place, but not out of the country, cannot be stopped by a creditor except under an execution.

In case of a person being indebted to a sufficient sum, which varies in the different Provinces, and absconds from the Province, leaving

effects liable to seizure under an execution, or attempts to remove such personal property either out of the Province or from one county to another, or keeps concealed to avoid service of process, the creditor, by making affidavit to that effect, may procure a warrant to attach such of the goods as are liable to seizure for debt.

425. Arrest of Debtors.—The *fiction* is that no one in Canada can be arrested for debt, but it is only true because other names are used for the cause of arrest—fraud, absconding debtor, contempt of court, etc.

All the Provinces allow an absconding debtor to be arrested and held for bail, also imprisonment for fraudulent assignments, obtaining goods under false pretences, and for contempt of court.

426. Garnishment.—All the Provinces allow money due a debtor, while yet in the hands of a third party, to be attached or garnisheed, but they all exempt a certain amount due wage-earners, unless the debt is for board or lodging (See foot-note).*

Garnishment attaches only to money due (not property) and the money must be presently due.

Money due a mechanic as contract price of work instead of for wages is not exempt.

A single man with no one depending on him for support has no amount reserved to him by law against garnishment, neither have other classes of people who are not wage-earners.

Salaries of officials under Dominion Government, salaries of judges, pensions, and teachers' superannuation allowances, and moneys deposited in Post-Office Savings Bank are exempt from garnishment by creditors or seizure in case of insolvency or under execution.

427. Judgment is the decree of a court delivered after a case has been decided. In Ontario and nearly all the Provinces executions may issue any time after judgment within six years without an order from the court, but after that an order from a Judge is necessary.

428. Execution.—If the judgment or amount of damage is not paid within the time specified in the judgment, an execution may be obtained to seize and sell the debtor's property to recover the amount of the judgment and costs. The laws of each Province, however, exempt from seizure under an execution sufficient property to enable the debtor to continue his regular avocation.

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*All the Provinces protect a fair amount of wages due wage-earners from garnishment which at present is: Ontario, seventy per cent. of wages due with power in the Judge to vary the amount; Manitoba, Alberta and North West Territories, $25; Saskatchewan and Yukon, $75; British Columbia, $60; Quebec, $5; Nova Scotia, $40; New Brunswick, $20; Prince Edward Island, one half of wages due.

429. Executions Binding Land.—In all the Provinces executions may bind the lands of the judgment debtor. Executions against goods cannot be filed against lands until an attempt to recover against the goods has failed and the execution has been returned marked "No goods."

430. Judgment Summons.—In case there is not property found with which to satisfy the judgment claim, most of the Provinces permit the creditor in suits before the small debts or inferior courts to have the debtor summoned before the court to be examined on oath as to the disposition he may have made of his property.

If the debtor does not make his appearance at the time and place directed in the summons he may be imprisoned for contempt of court; also if he refuses to answer questions, or to produce books and papers required by the court, or has made a fraudulent disposition of his goods he may be imprisoned.

431. Exemptions.—All the Provinces reserve a reasonable amount of property exempt from seizure under any execution, and distress by mortgagee for arrears of interest. Ontario and Quebec include landlord's warrant.

Where the debtor has more of any kind of property or articles than are exempt he is entitled to make choice of the part he wishes to retain. The bailiff or officer making the seizure has no legal authority to interfere in the selection.

432. Entering Cases in Court.—Merchants and others who have accounts they find it necessary to sue in the Small Debts Courts, or the Division Court of Ontario, may find the following of service:

The plaintiff, when entering action, must leave with the clerk, by post or otherwise, a simple statement in writing (with as many copies as there are defendants) of the causes of action. If an account, it may be in the usual form of an account; in case of a note, a copy; and of any other written instrument, a concise statement of it giving its purport. Must also give his own post-office address, and full name and post-office address of the defendant and state if he is unmarried.

433. Statement of Defence.—If the person sued wishes to defend the suit he must enter his defence or have his solicitor enter it within the time named in the summons, otherwise judgment would be given by default. The statement of defence is called a "Dispute note," of which the following will serve as a guide to those unfamiliar with the forms. The name of court and Province of course, may be changed to suit. It may be sent by post or delivered personally to the clerk of the court.

No.....

IN THE [No.] DIVISION COURT OF COUNTY OF .....

Between [give name], Plaintiff,

and [give name], Defendant.

Take notice, I dispute the Plaintiff's claim in this cause.

[Here specify the grounds of defence, statutory or otherwise.]

Dated this..... day of....., A.D., 19

[Signature].

To the Clerk of the said court,

and to the said Plaintiff.

In setting out the grounds of defence state them shortly and distinctly, using a separate paragraph for each separate defence you intend to make, if more than one, as follows:

1. That the plaintiff owes you a debt, which you claim should be set off against it; or,

2. That you have performed your part of the contract; or,

3. That you have offered to perform it, but that the other party refused to accept it; or,

4. That you have a counter-claim as an offset to part or to the whole claim of the other; or,

5. That the claim had become outlawed, as it was more than six years old; or,

6. That you were under twenty-one years of age when the debt claimed was contracted; or,

7. That you do not owe the debt claimed; or,

8. That performance was impossible: (1) Through the acts of God, as lightning, tornadoes, inundations, or death; (2) By public enemies, as an invading army.

CHAPTER XXIV.

COPYRIGHT—TRADE MARK—PATENT RIGHT.

434. Copyright.—In Canada a copyright may be obtained by the author or publisher of any book, picture, drawing, map, chart, etc., which holds for 28 years from the date of copyright, and renewal for 14 years by author, the widow or children. The fee is $1 for registration and 50 cents for a certificate of registration, which is forwarded to the author. Three copies of the work must be forwarded to the Department of Agriculture, except in case of a painting or sculpture, etc., when a written description will do instead of three copies. Every article copyrighted must contain a notice of the copyright. Any person who inserts such notice without having a copyright is liable to a penalty of $300. An infringement of a copyright incurs a heavy penalty and the confiscation of the works. To secure a copyright write to

The Honorable
The Minister of Agriculture
(Copyright Branch), Ottawa,

who will forward a copy of the Copyright Act and full information. No postage is required, as the letters go free.

In Newfoundland only two copies are required, and correspondence is with the Colonial Secretary, St. John's. Fee, $1.

435. Trade-mark.—A *general* trade-mark, such as "Pure Gold," which a manufacturer uses to distinguish his goods of various kinds from those of others, or a *specific* trade-mark, which is only used for one kind of goods, as "B.B.B." (Burdock Blood Bitters), also industrial designs, as letter heads, labels, etc., may all be registered and their exclusive use protected. A copy of the Act may be obtained from the Minister of Agriculture (Trade-mark Branch). Fee for general trade-mark is $30, and the time unlimited. Fee for specific trade-mark is $25, for a period of 25 years, and renewable as many times as desired. Fee for industrial design is $5. It holds good for 5 years, and may be renewed for 5 years more, but no longer.

436. Patent Right.—Nearly any article or machine that is new and useful may be patented. For full information write to

The Honorable
The Commissioner of Patents,
Ottawa, Canada,

who will forward a copy of the Act, which will give the fee for the various periods. The lowest fee for a six-year period at present is $20.

EXAMINATION PAPERS.

The following Examination Questions are designed to bring out the more important law points contained in each chapter:

Chapter I.

1. Distinguish between Common Law, Statute Law, and By-law.
2. What is the origin of the greater part of our commercial laws?

Chapter II.

1. Define contract.
2. How many classes of contracts are there? Name them, and give an example of each,
3. State why contracts under seal do not need a "consideration" to make them valid.
4. Distinguish between express and implied contracts, void and voidable contracts.
5. Name three kinds of contracts that are void because they are said to be against public policy.
6. Explain what constitutes fraud in a contract. Are fraudulent contracts void or merely voidable?
7. State what you know about the Statute of Frauds and Perjuries, for what purpose it was passed, and when.
8. Who are competent parties to make a binding contract?
9. A watch guaranteed to be gold which Smith bought from Jones on Sunday proved to be brass. Smith returned it and sued Brown for the return of the money. Can he recover it? Give reason.
10. Give the distinction between theft and false pretence, embezzlement and breach of trust.
11. When the acceptance of a proposition is given by post at what moment is the contract closed?
12. State what is meant by "consideration" in contracts. Name the different kinds of Consideration.
13. Is a promissory note given without any "consideration" valid? State why.
14. State clearly what contracts minors are competent to make.
15. What are the elements of a valid contract?

Chapter III.

How may a promissory note be drawn so that the holder cannot collect it, if the maker can prove it was obtained through some fraud?

Chapter IV.

If Jones were to go with Jackson to a grocer and say, "Mr. Jackson wishes to get about $10 worth of goods from your store. I have known him a long time, and believe him to be thoroughly honest. Would this make Jones liable for the debt if Jackson failed to pay it?" Explain.

Chapter V.

1. In the absence of any agreement expressed or implied what is every debt deemed to be payable in?
2. If a debtor is making payment to a creditor and there is more than one debt due, which party has the legal right to say on which debt the payment shall be applied?
3. What is meant by a legal tender of money or property?
4. State what money is legal tender in Canada, and how much of each kind.

Chapter VI.

1. What instruments are held to be negotiable paper in Canada?
2. Define promissory note, draft, cheque, bill of lading, warehouse receipt and bill.
3. What do you understand by an "innocent holder for value" in connection with negotiable paper?
4. Name the defects and alterations that a promissory note may exhibit without having its validity destroyed.
5. What two classes of negotiable instruments have no days of grace allowed?
6. What is the difference if a surety write his name on the back of a promissory note, or on its face, along with that of the maker? State how it affects both the surety and the holder of the note at maturity.
7. Can a forged note transferred to an innocent holder for value be collected? Tell how it would be with a stolen note or one obtained through fraud.
8. Give a form for a non-negotiable note and tell how it may be transferred.
9. A note has neither "order" nor "bearer" on it, nor "value received," may it still be negotiated?
10. What is a Lien Note, and how may it be transferred so the transferee may have the same rights as the original payee had?
11. What distinguishing mark does the Bills of Exchange Act require patent right notes to bear?
12. Explain the position of the purchaser of a patent right note.

13. Write a promissory note drawing eight per cent. interest that will continue to draw the same rate if not paid at maturity.

14. As any rate of interest that a man legally agrees to pay can be collected, explain what is meant when it is said that "five per cent. is the legal rate of interest in Canada."

15. Explain why it is better to name a place of payment in a note or bill.

16. Explain the position of the holder of a promissory note if he acquires it after maturity.

17. Under what circumstances may an "innocent holder for value" of a promissory note obtain a better title than the original payee possessed?

18. If commercial paper in Canada falls due on Sunday or legal holiday, when is it payable?

19. Jones gave Brown his note at 30 days for $200 in consideration that Brown vote for him at a municipal election. Can Brown collect it? Why?

20. What is meant by collateral security? Days of grace? Chattel note?

Chapter VII.

1. Name the two classes of bills of exchange. A merchant in Toronto has one bill of exchange on Buffalo, N.Y., and another one on Vancouver, state to which class these bills, respectively, belong.

2. How many parties are there to a draft? Describe them.

3. What is the distinction between a Sight draft, Time draft, and a Demand draft?

4. State clearly when and where an acceptance should be presented for payment in order to hold the indorsers on it liable.

5. Explain General acceptance and Qualified acceptance.

6. J. W. Jones accepts a draft at 30 days' sight, drawn on him through the Bank of Nova Scotia, but in accepting it he changes the time to 60 days. What is the duty of the Bank in such case?

Chapter VIII.

1. The text mentions four different purposes for which negotiable paper is indorsed to comply with business necessities and conveniences. Name them.

2. When is it compulsory that a bill or note should be indorsed?

3. How may you indorse a promissory note without rendering yourself liable for payment?

4. What is the object of protesting a bill or note, and how is it done, and by whom?

5. When is a bill or note said to be dishonored ?

6. State what bills are necessary to protest if not paid at maturity, and what bills need not necessarily be protested. Which Province is an exception ?

7. If a dishonored bill or note having an indorser on it is not protested for non-payment, in what other way may you hold the indorser liable ?

8. Draw a joint and several note at 60 days for $150 in favor of yourself, signed by James Brant, and then indorse it " without recourse."

9. Explain the legal force of the words " Without prejudice," and how they may be profitably used by litigants or debtors.

Chapter IX.

1. How are Canadian Banks organized ?

2. What does the business of banking include ?

3. State how the bank note currency of Canadian banks is secured in case of insolvency of the bank.

4. Explain why depositors are not as well protected as note-holders.

5. State what restrictions the Bank Act places upon the amount of notes a bank may issue.

6. What is a Letter of Credit ?

7. Define cheque, certified cheque, and crossed cheque.

8. State the difference between a cheque and a demand draft.

9. Write a cheque that when paid will serve as a voucher for the payment of one month's rent of your residence.

10. What is the object of " crossing " a cheque ?

11. State the difference in crossing a cheque Generally and crossing it Specially.

12. Write a cheque for $500 and cross it to a certain bank.

Chapter X.

1. Are due bills negotiable instruments ?

2. In what respect does an order on a merchant differ from a draft on a merchant ?

3. Give the meaning and purpose of a Release between two business men.

Chapter XI.

1. Tell what you understand by the Statute of Limitations. How does it operate in regard to the collection of promissory notes, mortgages, book accounts, bank notes, and legacies ?

2. Tell how the different kinds of debts may be prevented from outlawing.

3. Tell how a valid title to real estate may be obtained merely by occupying land.

4. When does a mortgage, a promissory note, and a store debt respectively, commence to outlaw ?

Chapter XII.

1. In what respect does a chattel mortgage differ from a bill of sale ?

2. How may the mortgagee allow the debt to stand and still retain the priority of his claim over other creditors year after year ?

3. State which Province does not make any provision for the use of chattel mortgages.

4. You hold a promissory note and a chattel mortgage against the same person and wish to sell them. Tell how each instrument may be transferred.

Chapter XIII.

1. Define mortgage, and state what interest the mortgagor retains in the mortgaged property.

2. What is the "Personal covenant" in a mortgage ?

3. What determines the priority of claim between two mortgages covering the same property and executed the same day ?

4. Explain what is meant by "foreclosure" and "equity of redemption."

5. If property sold under a mortgage does not bring enough to pay the mortgage debt, interest and costs, tell how the mortgagee may proceed against other property held by the mortgagor.

6. Tell what two things besides a renewal will prevent a mortgage from outlawing.

Chapter XIV.

1. Give the names of the two classes into which Property is divided and state what each one includes.

2. What would constitute a binding agreement for the purchase or sale of real estate ? Is the law the same in all the Provinces ?

3. State the maximum amount in your Province for which an oral agreement for the purchase or sale of personal property is binding.

4. Does an innocent purchaser for value of stolen goods obtain a good title to them ?

5. What is meant by "conditional sales" of goods ? Tell how it differs from a Bill of Sale.

6. Give briefly the main features of the Torrens system of Lands Transfer.

7. What is meant by "Constructive delivery" of property? Give an illustration.

Chapter XV.

1. State clearly the distinction between General and a Special Agent, as to the scope of their authority, and the power they possess to bind their principal by their acts.

2. What is a Power of Attorney?

Chapter XVII.

1. Explain lease, lessor and lessee.

2. What are the usual terms or periods of tenancy?

3. State the length of time for which a verbal lease would be binding, and when it must be by deed, and when it must be registered.

4. If a monthly, quarterly, or a yearly tenant, wishes to vacate the premises what notice must he give the landlord?

5. If no seal is attached to a written lease what is the effect of the omission? Can a landlord increase the amount of rent if the tenant objects? If so, state how and when it may be done.

6. What different remedies has a landlord if a tenant does not pay his rent when due?

7. A. leases a house from B. for one year from January 1st, 1907, does it require any notice to terminate the tenancy at January 1st, 1908? If A. remains over the year and pays rent, what notice is then necessary to terminate the tenancy at the end of any year thereafter?

8. What is an "overholding tenant"?

9. Can a tenant's statutory exemptions be seized and sold for arrears of rent? If so, under what circumstances?

Chapter XVIII.

1. If two or more persons are associated in business how may it be known whether they are subject to the partnership laws or not? State the two prime tests of partnership. Name the two classes of partnership and give the distinctive features of each class. How long may a partnership firm transact business without registering before becoming liable to the penalties for non-registration?

2. How may a partner retire from a partnership and avoid liability for the future debts of the firm?

3. How many classes of general partners are there? Describe each one.

4. If an individual trader who has no partner, wishes to add "& Co." to his name tell how he may legally do so.

Chapter XIX.

1. What do you mean by a Joint Stock Co., and how does it differ from a partnership business? State in detail.
2. What is meant by Double Liability, and to what kind of a company or business does it apply?
3. Define capital stock, shares, watered stock, and dividend.
4. State in what Provinces Joint Stock Companies are formed by Letters Patent, and what Provinces by Registration.
5. State the object of the compulsory use of the word "Limited" in connection with Joint Stock Companies.

Chapter XX.

1. Tell what quick and sure remedy a mechanic or laborer has to collect wages for work performed on a building if the contractor does not pay him.

Chapter XXI.

1. What persons in Canada and Newfoundland, respectively, can make a valid will?
2. How many witnesses must there be to a will to make it valid?
3. In writing wills state when the term "devisee" should be used, and when the term "legatee," and when devise or bequeath.
4. Define intestacy, executor, executrix, administrator, heir, and dower.

Chapter XXII.

1. Do our laws make any distinction between an unmarried woman and a married woman as to the control of her own property?
2. What is meant by a wife's right of dower? When is it available?

Chapter XXIII.

1. What is meant by an insolvent debtor?
2. Tell what is meant by "fraudulent preference" as applied to an insolvent debtor.
3. State what you understand the "Creditor's Relief Act" to be, and what its object is.
4. What is the distinction between a Judgment and an Execution?
5. State for what offences insolvent debtors in Canada render themselves liable to arrest.

Chapter XXIV.

1. What is a copyright, and how is it obtained?
2. Give the distinction between a General and a Specific trademark, and the cost of each.
3. Address an envelope to the proper official if you wished to secure a copy of the Patent Act.

GLOSSARY.

Abatement.—A reduction. To abate a nuisance is to discontinue it.

Acceptance.—Name given to a draft after it has been accepted.

Accommodation Paper.—A promissory note or bill given without value.

Acquittance.—A release.

Ad valorem.—According to value.

Alias.—(1) Otherwise. (2) Assumed name. (3) A second or further writ after a first writ has expired.

Alibi.—In another place.

Alimony.—Allowance made by court to a wife out of the husband's estate.

Annulment.—Cancellation ; the act of making void.

Anno Domini.—In the year of our Lord.

Appraise.—To set a price upon ; arbitration and award. (See Section 101.)

Assets.—Available means for the payment of debt.

Assignee.—One to whom property is assigned.

Attachment.—Seizure of goods by a judge's order or other legal process.

Attorney.—A person appointed to act in place of another.

Bailment.—The receiving and keeping of goods for a time by one person from another.

Barter.—Traffic by exchange of commodities.

Bequest.—A gift by will of personal property.

Bill.—A general name for negotiable paper.

Bill of exchange.—A draft.

Bill of lading.—A receipt from the master of a ship acknowledging the shipment of goods.

Bona fide.—In good faith.

Capias.—A writ authorizing the arrest of a person.

Causa mortis.—On account of death.

Caveat.—Meaning "to take care" ; a warning.

Certiorari.—A writ from a superior court commanding the records of a cause pending in a lower court to be brought before such higher court.

Chattels.—Every species of personal property.

Cheque.—A demand draft on a bank.

Chose in Action.—Personal property not in actual possession, but which the owner has a right of action to recover, as a debt, etc.

Codicil.—A supplement under seal to a will for the purpose of altering or adding to its contents.

Collateral.—Additional security by depositing stocks, mortgages, etc.

Composition Deed.—(See Section 100.)

Compromise.—(See Section 99.)

Consignee.—One to whom goods are consigned.

Contra.—Opposite.

Contra bonos mores.—Inconsistent with good morals.

Coverture.—The legal state of a married woman.

Curtesy.—A husband's life interest in the estate of his deceased wife.

Debenture.—A bond on which incorporated companies and municipalities borrow money.

De facto.—In fact ; actually existing or done.

De jure.—By right ; by law.

De novo.—Anew ; from the beginning.

Deposition.—Written testimony given under oath.

Detinet.—Action at law to recover possession of specific property ; replevin.

Devise.—A gift by will of real estate.

Dies non.—A court holiday ; a day on which the judges do not sit.

Domicile.—The place where a person permanently resides.

Donatio mortis causa.—A gift of personal property made in contemplation of death.

Duplicate.—A copy ; twofold.

Easement.—A privilege which the owner of one adjacent tenement has over another.

Effects.—Money and personal property of every kind.

Entail.—Property limited in descent to a particular heir or heirs.

Escheat.—Property reverting to the original owner or the Crown through failure of heirs.

Escrow.—A deed signed and left with a third party to be delivered to the grantee when he has performed some stipulated act.

Estoppel.—A bar to an action arising from a party's own action or neglect.

Equity of Redemption.—A right allowed the mortgagor for a certain time in which to redeem lands mortgaged.

Ex officio.—By virtue of the office.

Ex parte.—On one part.

Ex post facto.—After the act has been performed.

Ex tempore.—Without premeditation; off-hand.

Fac simile.—An exact copy.

Fee simple.—Title to property without any restrictions or conditions.

Femme Covert.—A married woman.

Femme sole.—An unmarried woman.

Ferae. naturae.—Wild animals or birds in which no person can claim property.

Flotsam.—Goods found floating in the sea.

Foreclosure.—Suit brought on a mortgage to compel the mortgagor to either pay the debt or lose his equity of redemption.

Fiat.—An imperative command; decree.

Fieri facias.—A writ of execution.

Franchise.—A privilege; freedom; exemption.

Garnishment.—A process of attachment securing money due a debtor in the hands of a third party.

Habeas corpus.—You may have the body; a writ whereby the legality of any imprisonment may be judicially inquired into.

Hypothecate.—To pledge as security.

In esse.—In being; actually existing.

In posse. Within possibility.

In propria persona.—In one's own person.

Insolvent.—Unable to pay debts in full.

In transitu.—On the passage.

Invalid.—Of no legal force.

Ipse dixit.—He himself said it; mere assertion.

Ipso facto.—By that fact.

Ipso jure.—By the law itself.

Judicial Sale.—Sale ordered by a court.

Jure gentium.—By the law of nations.

Laches.—Negligence in prosecuting legal rights.

Lease.—A contract for the use of property.

Legacy.—A gift by will of personal property.

Legal Tender.—(See Sections 102 and 104.)

Letter of Credit.—(See Section 193.)

Levari facias.—A writ of execution against goods and chattels.

Lex loci.—The law of the place.

Lex talionis.—The law of retaliation in kind.

Liquidation.—Winding up a business and adjusting the debts.

Liquidated Damages.—Damages agreed upon at the time of making the contract if a breach occur.

Loco parentis.—In the place of the parent.

L.S. (locus sigilli).—The place of the seal.

Mala fides.—Bad faith.

Malfeasance.—A wrongful act.

Malpractice.—Bad or unskilful practice.

Mala in se.—Evils in themselves, as murder, perjury, etc.

Malum prohibitum.—Bad, because forbidden, as trespass, etc.

Mandamus.—We command; a peremptory writ from a superior court to perform a duty.

Manu forti.—With strong hand; a term used with reference to forcible entry.

Mesne.—Intervening; middle.

Messuage.—An old legal term for a residence.

Misfeasance.—The doing of a lawful act in an unlawful manner.

Misnomer.—A wrong name; mistaking the true name.

Ne exeat provincia.—A writ to arrest a debtor absconding from the province.

Nemine contradicente (nem con).—None dissenting.

Nisi Prius.—A court where actions are tried before a judge and jury.

Non compos mentis.—Of unsound mind.

Nudum pactum.—Naked contract, one invalid at law.

Onus probandi.—The burden of proof.

Overt.—Open; public.

Par of Exchange.—The intrinsic value of money when compared in weight and fineness with that of other countries.

Parole.—By word of mouth.

Party wall.—A wall used jointly by two tenements which it separates.

Per capita.—Per head.

Per se.—By himself or itself.

Pluries.—Very often; used for the third or further writ against same defendant.

Prescription.—In law a right acquired by long use.

Prima facie.—At first appearance.

Probate.—The proof of a will before a surrogate court or judge.

Pro tanto.—For so much.

Proxy.—The person who is substituted to act for another.

Puisne.—Inferior judges of the Supreme Court.

Quantum meruit.—As much as he has deserved.

Quash.—To set aside.

Quo animo.—By what intention.

Realty.—Lands and houses.

Remedy.—Legal means to enforce a claim or to redress an injury.

Remission.—In civil law a release of a debt or claim.

Renunciation.—Giving up a right.

Replication.—The plaintiff's answer to a defendant's plea.

Respondent.—One who answers; a defendant.

Res integra.—An entire matter.

Reversion.—The right to future possession.

Scire facias.—That you declare; a writ commanding a party to show cause why a certain thing should not be done.

Seisin.—Possession of land.

Sequestration.—In course of equity a process depriving a delinquent party of his entire estate.

Set-off.—A counter claim.

Severally.—Individually.

Sine die.—Without day; adjournment without a day fixed for reassembling.

Ss. (scilicet).—To wit; namely.

Solvent.—Able to pay all just debts in full.

Specialty.—A contract under seal.

Subpœna.—Writ to compel witnesses to attend a trial or court.

Summons.—A writ by which action is commenced, the defendant being thereby summoned to appear in court.

Supersedeas.—A writ to stay proceedings.

Surety.—(See Section 120.)

Tender.—An offer of money or other property for acceptance.

Tenement.—A dwelling-house.

Terse tenant.—The person in actual possession.

Tort.—A wrongful act or injury, as slander, libel, false imprisonment, trespass, etc.

Transcript.—A copy.

Transitu.—In the act of passage.

Trover.—Action at law to recover goods or their value.

Usury.—Interest in excess of the legal rate.

Vendee.—The buyer.

Vendor.—The seller.

Vendue.—Sale by auction.

Venue.—The county in which the action is to be tried.

Veto.—I forbid.

Vice versa.—On the contrary.

Viva voce.—With the living voice; orally.

Void.—That which has no legal effect.

Waiver.—The abandonment of or the omission to exercise a legal right.

Warrant.—A written authority from a court of justice to make an arrest or search for stolen goods, etc.

Warranty.—A guarantee.

Way bill.—A list of goods transported by railway or other common carrier.

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